Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
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[*Latin ed. p. 1*]

ACTS OF THE HOLY SEE, CONCISELY PRESENTED AND ILLUSTRATED, BY THE STUDY AND CARE OF VICTOR PIAZZESI, DOCTOR OF BOTH LAWS.

Legal and more solemn acts, emanating directly from the Supreme Pontiff: among these are those which can be made public by law, whether they be Decrees, Instructions, or Responses, and other similar matters; especially, expositions and resolutions of cases from the Sacred Congregations, by various Cardinals, contributing to the accurate understanding and observance of ecclesiastical law, concisely presented through diligent study. Finally, other legal matters, by which those things which may present difficulty in the aforementioned acts are suitably illustrated, or which further contribute to the knowledge of existing law: for the benefit of those who diligently seek to understand the laws of the Church, and who labor diligently in the governance of the Christian flock, or in cultivating the vineyard of the Lord.

Volume XXVII

ROME

FROM THE PRINTING PRESS OF THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH

1894-95

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[*Latin ed. p. 3*]

To the Most Holy Lord, Pope Leo XIII, to the Archbishops and Bishops of Brasiliae; wherein useful things are recommended for the advancement of Christian faith and piety. We have received your letters from the past year, announcing the common joy and gratitude of the hierarchy among you, concerning the recent expansion, namely, the establishment of another ecclesiastical province and the addition of four episcopal sees. — It is certainly a cause for rejoicing that this new manifestation of Apostolic concern for your people has occurred. For in many respects in which the Catholic cause seemed to be somewhat declining among you, it is necessary to commend the increase in the number of pastors, considering the vastness of the region and the multitude of inhabitants. For it was happening that

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the Bishops could not exercise that vigilance over the clergy and the faithful which they desired, both to ward off evils and to promote the virtue and dignity of the Catholic name. Therefore, we approved of your pastoral efforts, when, having met in Paulopolis, you requested the expansion of the episcopal hierarchy from the May in Rome; and We readily agreed to fulfill these requests. — But, Venerable Brothers, while from the Bishops, now in greater number, the hope for the flourishing growth of the Christian cause shines brightly, it must nevertheless be expected, above all, from your own zeal, that appropriate remedies be applied to combat the evils that are spreading from all sides. To ensure that this aspect is not neglected by Our paternal concern, We have decided to present what We deem to be particularly worthy of your attention, things which We hope will greatly contribute to the advancement of Christian faith and piety. First of all, it is necessary to ensure that men of the sacred order are instructed in the best disciplines, especially those for whom it is most necessary, so that they may properly present the Catholic truth and vigorously defend it against attacks. It is clearly demonstrated by daily experience that in places where the administrators of the sacraments are lacking in doctrine, the people are almost always oppressed by ignorance of the faith and religion. For the lips of the priests shall keep knowledge, and they shall seek the law at his mouth: because he is the angel of the Lord of hosts. (Mal. 2:7) Furthermore, the Apostle, among other reasons by which he presented himself as a minister of God (2 Cor. 4:6), possessed knowledge (Mal. 2:6).

[*Latin ed. p. 4*]

4. The letter also mentions this. Indeed, when this knowledge is absent, it also proves pernicious to the very priests, so that, while they suffer the penalty for neglecting their office before God, they are despised by the people: "Therefore have I also made you contemptible, and base before all people, as you have not kept my ways, and have accepted persons in the law." (Mal 2:9). However, this ornament of doctrine, and this safeguard, will by no means truly contribute to the intended purpose, if it is separated from the sanctity of life and morals. For, besides the fact that knowledge without charity does not edify, but inflates (1 Corinthians 13:4), it is almost a characteristic of human nature that, although Christ has commanded that doctrine should be received from the ministers of the sacred rites, but that their actions should not be attended to if they differ from the doctrine; rather, they are more inclined to those things which they see with their eyes, than to those things which they hear with their ears. Therefore, concerning the very Savior God, who has become not only the teacher, but also the model of His flock, we read that He began to do and to teach; so that, just as the priest transmits and commends the doctrine, he himself confirms it by his actions. Above all, he who is appointed to govern parishes, having been called to the Lord's vineyard, should diligently and constantly exercise and

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cultivate this office, remembering that he will one day give a most serious account to the Lord concerning the souls entrusted to him. Moreover, he should be most diligent in all things, in order that he may be restrained in discipline at all times and in all matters. He must indeed strive to serve Christ; but not except those whose counsel and authority Christ Himself has chosen as leaders. It is your task, Venerable Brothers, to cultivate such helpers: for only then will they become priests, of the kind that you have endeavored to form. You certainly have where, for the sake of your and the Church's desire, to form ministers who are pleasing to God, and workers who are blameless (2 Timothy 1:15): namely, in the sacred seminaries, which have been established for a great benefit, as their very name makes clear. Therefore, direct your minds and your diligence towards this, so that the ecclesiastical seminaries, which already exist, may flourish completely, both with regard to the study of sacred disciplines, and with regard to the holy formation of the minds of the young men. Indeed, in order that the studies may proceed correctly, the best teachers are needed, not only those who are imbued with sound doctrine, but also those who impart it appropriately and faithfully according to Our prescriptions. But in order that the young clergy may develop,

[*Latin ed. p. 5*]

LETTER 5: The spirit of the Church is drawn from and cultivated by virtues; therefore, teachers of piety must be chosen with the utmost care: yet, let your diligence and solicitude assist and perfect their work. But in dioceses where no seminaries yet exist, let the bishops take every care to establish them as soon as possible, and to constitute them in the best possible manner, carrying out everything within their power, both that which was sanctioned by the Council of Trent and that which We ourselves have prescribed in Our Apostolic Letters of May 5th, in the year 1892. The freedom of teaching which now prevails in your land offers you a greater opportunity to implement what We have recommended regarding the proper method of studies.

To these, a most excellent aid has also been prepared in the College for Clergy, which Our Blessed Pope Pius IX, for the benefit of South America, founded, and which We ourselves have endeavored to promote and cherish. The expectation of a happy outcome is being fulfilled day by day: and it is sufficient to mention, Venerable Brothers, that from your own ranks, some have been counted among the students who justly rejoice in the same Ephesian spirit. Therefore, We urge you, and especially you, to send to Rome those young men who give excellent hope, so that they may be formed there, and afterwards be usefully employed in teaching and in other duties.

It is scarcely necessary to speak of the benefits that will be conferred upon you by the religious orders of men. We have decided, by Our Apostolic provision, to restore these to the observance of their former institu-

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tions, having considered it wise to do so from the past abuses. To that end, on September 3rd, in the year 1892, We decreed that the houses of native religious should be subject to the authority of the bishops.

Therefore, in this matter which is so useful and important, we are confident that you will not be wanting in effort. We are grateful for what has already been accomplished, thanks to the efforts of the Venerable Father Jerome, the Metropolitan Archbishop of Petra, Our Envoy to the Apostolic See among the Presidents of your republic. However, that these beginnings may have greater growth and be brought to the desired outcomes, We urge you to devote your efforts zealously to religion and to your flocks.

Meanwhile, We congratulate the religious families of both men and women who have gladly accepted the instructions given to them by Us, and who have shown themselves eager to restore the original character of each institution. Venerable Brothers, regarding the proper formation of the clergy and their application to sacred duties, do not spare your efforts, for the sake of the faith.

[*Latin ed. p. 6*]

6. LETTERS demand this. For this reason, it is most important that the elements of the most holy religion be suitably taught to boys and uneducated men, and that the diligence of the sacred orders be constantly invoked. Furthermore, since it is permitted publicly, let Iude be instructed in the education of young people, so that, to the great detriment of the faith and of morals, they may not be led to attend schools or to frequent gymnasiums, where no mention is made of Catholic doctrine, unless it be in a slanderous manner.

— Moreover, since minds are strengthened and inflamed to undertake great deeds for religion through mutual counsel and examples, you will do very well for the Catholic and public good if you encourage and urge laymen, especially young people, to join societies founded on Christian principles. We have seen in Lauda societies that, while striving to promote religious matters and the welfare of the poor, diminish in every way the effectiveness of those associations which, under the pretext of public charity, are very harmful to the good of the Church and the State.

— Nor should you, Venerable Brothers, overlook how much good or evil has been wrought in these times by ephemeral publications and writings published for the public. Therefore, it must be among the last concerns of Catholics that even with these weapons, the cause of the Christian name be defended; observing, of course, the guidance of the Bishops, and with due reverence for the civil authority to which it is due.

— Finally, all Catholics must remember that it is of the greatest importance what kind of men are chosen to be part of the legislative body; therefore, respecting the laws of the citizens, it is necessary for all to strive to

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elect, by common suffrage, those who, with a zeal for public affairs, demonstrate a proven love for religion. This, however, will be achieved more happily if each one shows obedience to the supreme authority that governs the state, and if they pursue with unity and constancy those things which We laid down some time ago in Encyclical Letters concerning the Christian Constitution of States.

— Furthermore, Venerable Brothers, may the closest charity and harmony of spirit prevail among you, so that you may be wise, united, and think the same things (1). For this purpose, We earnestly commend that you frequently communicate with each other, and that you visit Episcopal gatherings more often, according to the distances between places and the duties of the sacred office. The Legate of the Apostolic See is present with you, (1) Philippians, chapter 2.

[*Latin ed. p. 7*]

LETTERS, which may reveal Our thoughts and intentions to you; and We, moved by paternal charity which embraces you, are always ready to offer you assistance in your endeavors. May God, with His most bountiful generosity, grant you the graces necessary to carry out your pastoral duties; and may Our Apostolic blessing, which We impart to you, Venerable Brothers, and to the clergy and people entrusted to your care, be a source of constant blessing. Given at Rome, near St. Peter's, on the second day of July, in the seventeenth year of Our Pontificate. LEO XIII, POPE.

LETTERS from the Most Holy Lord Pope Leo XIII to Thomas Coconnier, a Doctor of Theology of the Order of Preachers at the University of Freiburg, concerning the *Revue Thomiste* journal.

Beloved Son, health and the Apostolic blessing.

It is entirely in accordance with Our intentions that you and your esteemed colleagues have established the *Revue Thomiste* journal, publishing it at regular intervals. For We have, for a long time, and not without benefit, striven for the restoration of Christian wisdom, with the aim of promoting the truth, which in these times has been grievously afflicted; from which, not only the correct understanding, but also the correct action, depend on momentous matters. Therefore, to reconcile the studies of learned men with the Faith, which is divine truth, and through it to protect all human disciplines from the stain of error, and to promote their true progress, is a work of great importance and of no small utility.

It will certainly be beneficial to those who, using the most wise teacher, St. Thomas Aquinas, diligently examine his teachings, draw out their essence, and present them in a clear and accessible manner; for he himself is truly excellent in illustrating all matters, resolving disputes, and, even if the course of time has led to difficult circumstances.

It is a great joy to Us to see so many engaged in this important work;

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and your own writings, which you have graciously presented to Us, testify to your excellent contribution. We have gladly accepted this most valuable offering.

[*Latin ed. p. 8*]

8. Letters concerning sound doctrine are more opportune than, if I may say so, your endeavors; for the origin of human truth springs from divine truth, and a necessary connection exists between the two. Thus, as suspicions are gradually dispelled, may reverence and study of the learned grow towards the Faith. Furthermore, for the common cause of truth, in which your labors are engaged, it is entirely necessary to be united with similar defenders, with concordant minds and united efforts; which, with God's help, we are certain you will always readily provide. May the best safeguards also be added to you, beloved son, who presides over this work, and to all those joined to it for the same purpose: we implore this for each of you through our Apostolic blessing. Given at Rome, near St. Peter's, on the 12th of July, in the seventeenth year of our pontificate. LEO PP. XIII.

FROM THE SACRED CONGREGATION FOR THE COUNCIL - FIRMA.

REQUEST CONCERNING RESIGNATIONS OF BENEFICES.

January 20, 1894.

Through summary petitions.

COMPENDIUM OF THE MATTER.

In the relation of the state of the Church of Firmana, presented to the Sacred Congregation for the Council under the date of December 9, 1892, the following is contained in Chapter X, as the first request:

"From the Constitution of Gregory XIII, *Humano vix iudicio*, it is prescribed that resignations of benefices (which are made in the hands of the Ordinaries) must be made within three months, in the manner and form prescribed in the same Constitution, namely, both in the Cathedral Church and in the Church of the Benefice, while a frequent gathering of the people is present at the Masses... solemnities. The purpose of this prescription, as noted by Canonists, is to remove..."

[*Latin ed. p. 9*]

In FIRMANA, frauds and serious inconveniences are avoided, which can arise from secret resignations of benefices; and especially, that those who resign should not remain in the benefices, exercising invalid jurisdiction or receiving undue fruits. "Indeed, a doubt arises whether such

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a publication, carried out in the manner prescribed by the Constitution under penalty of nullity, is also necessary in the provision of parochial benefices, whose resignation and collation, at least in my Archdiocese, are sufficiently well-known and public, so that the aforementioned method should be observed, or perhaps it is, indeed, much better and more effective than what is established in the Gregorian Constitution." "For when a parochial church is vacant, even through resignation, a public notice is made, not only through the publication of edicts affixed to the doors of both the metropolitan church and the vacant church, but also through a letter encyclical, printed and sent to all towns of the Archdiocese, in which the vacancy of the church and the cause of the vacancy are stated. After this notice, which must be expedited within one month from the date of acceptance of the resignation, the Bull of the new provision must be publicly read by the Chancellor in the church before the rite of possession is completed. And since the government now delays for several months, *regium placet*, it easily happens that this possession of the new parish priest is delayed, not for three, but for six months. Therefore, with this public notice, the purpose of the Gregorian Constitution is certainly achieved, even if the method strictly prescribed in it is not observed." "If the publication were to take place during the solemn Masses in the Metropolitan Church, to which very few people have convenient access, the publication would almost only serve the Chapter members. But since the validity of the collation of churches is at stake, and since the clauses of the Gregorian Constitution are the most severe, I humbly ask the Most Eminent Fathers whether the practice described here can be maintained; and whether the method of publication prescribed by Gregory must be strictly observed, under penalty of nullity, even for parochial benefices, and therefore, whether invalid-"

[*Latin ed. p. 10*]

10. In FIRMANA, let the previously made arrangements be confirmed, and to this end, I pray and implore Your Eminences that they deign to ratify them.

Regarding the matter under discussion, the following observations have been made: The Roman Pontiffs have always been deeply concerned about the resignations of benefices, lest they harm the hereditary succession, or lest they cover up numerous fraudulent acts of simony. In particular, with regard to the resignation of benefices according to Rule 35 of the Chancery, according to the Constitution of St. Pius V, *Sanctissimus*, and especially according to the Constitution of Gregory XIII, *Humano vix iudicio*, of January 9, 1783, solemnly confirmed by Benedict XIV in the Constitution *Ecclesiastica*, of June 15, 1746; it is established that the collation of a resigned benefice shall not be made without a solemn publication, under penalty of nullity. Gregory XIII, in the aforementioned Constitution, specifically determined the manner of publication, as generally prescribed by the

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Rule of the Chancery and by the blessed Pius V; and he decreed that this publication shall be made in the cathedral and in the church of the benefice, or in the churches, if there are several, wherever a frequent gathering of the people occurs for the solemnities of the Mass. If the church is rural, in addition to the publication in the cathedral, the same shall be done in the parish church, within the limits of which it is located. This publication must be made publicly by exhibiting the Apostolic Letters, and by pronouncing clearly and intelligibly the resignation or cession, the nature of the benefice, and the invocation, the names and surnames of the one resigning or ceding, and of the one in whose favor this act is made. The Pope strengthens these dispositions with these sanctions.

"Furthermore, the method and form here described must always and everywhere be observed, and no other or equivalent method shall in any way be admitted in all such resignations, cessions, and retrocessions concerning any churches whatsoever. If anything of the aforementioned is omitted, after the terms prescribed have elapsed, all dispositions and graces of those resigning and ceding benefices and rights of this kind, together with all that follows from them, whether peaceful or contentious, shall be void and of no effect, and shall have no validity."

[*Latin ed. p. 11*]

FIRMANA. Furthermore, another grace or advantage pertaining to such a benefit, or right, granted to those to whom it has been conceded, will be maintained, but those who are such are deemed incapable and unfit to resign or relinquish such benefits and rights, whenever they may be obtained, and those rights, from the very beginning of the resignation or relinquishment, are considered to be vacated and to remain vacated, even if they were otherwise null and void, and even if those who resign or relinquish them retain possession afterward, the constitutions regarding annual and triennial possession do not apply, nor are presumed or tacit retrocessions admitted, even due to the long-standing tolerance of such continued possession; nor will any other right or benefit whatsoever be maintained at any time, but such benefits or rights, being thus vacated from the beginning, can only be obtained and granted by the aforementioned Apostolic See. Regarding the matter under consideration, it must be noted that the publication equivalent to a formal declaration, in which the requesting Ordinary placed his trust, is excluded by the cited decretal Bull. For the Pope states that no other form of publication, equivalent to a formal declaration, is admitted, except that which He Himself has established. Moreover, the purpose of Gregory XIII in the cited Constitution was to determine the specific manner of publication, which His predecessors had left undetermined. Consequently, it follows definitively that, in order to maintain validity, the form established by this Pope must be observed. Numerous decisions of the Sacred Roman Rota confirm this. Nor can recourse be had to prescription, at least ordinary

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prescription, for benefits resigned without the prescribed formalities being observed, because the Pope specifically removes the benefit of the rule of the Chancery, of annual and triennial possession. The ultimate recourse would be to prove that the Pope's Bull was not promulgated in a certain province, or at least that a contrary custom existed that abrogated it. However, both of these recourses seem to be prohibited by Parisius Flaminius, who wrote celebrated commentaries on this Bull of Gregory XIII in his treatise "De resignatione Beneficiorum" (On the Resignation of Benefices), proving in book II, question 9, that this law was promulgated in Rome with the intention that it be legitimately considered promulgated for the entire world, according to the style of the Curia. He also states that it cannot be said to be not accepted in practice, because...

[*Latin ed. p. 12*]

12. In Fermo, it is established that the three-year period is strictly observed, as is argued under number 26 of the decree *Quæstiones Veræ*, title 9, book 1, with García de Beneficiis, Part IV, chapter 3, number 289, noting that the Gregorian constitution regarding such publications is not universally accepted; furthermore, Schmalzgrueber, title 9, book 1, and St. [Antoninus] in the same work, do not reject this opinion. Therefore, in a particular case, it must be demonstrated with clear evidence that the constitution of Gregory XIII has fallen into disuse. Otherwise, it would be entirely unreasonable to completely invalidate such a custom, especially in modern times, due to changed conditions. However, although, unless the contrary is proven, the custom should be considered invalid, and such grants of benefits null and void, it is perhaps possible to resort to the remedy of extraordinary prescription in some cases; for the Pope alone has excluded ordinary annual and three-year prescription according to the rules of the Chancery, and extraordinary remedies of law and benefits are not considered abolished unless expressly excluded, especially when some ordinary ones have been expressly excluded. Therefore, as Flaminius Parisius states in the aforementioned work, question 6, number 76 and following, the decisions of the Sacred Rota, which exclude the benefit of prescription for correcting grants of benefits, speak of ordinary prescription when referring to a non-legitimate publication. Since the question is about a law that invalidates, I believe it is appropriate to cite these words from Emi D'Annibale, *Summa Theologica Moralis*, Part I, Prolegomena, Tractate III, Chapter II, On Laws in Specific Cases, number 213, where, speaking of the form and solemnities of acts in invalidating laws, he says: "Furthermore, all these things are introduced to prevent fraud, and laws of this kind rely on the presumption of fraud. Therefore, the question, if I am not mistaken, is whether this presumption is of fact or of danger; for some (as of fact), if fraud is truly absent, they consider what is done to be valid; others (as of danger) always consider it to be invalid. Both opinions are weighty;

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therefore, some favor the possessor..."

[*Latin ed. p. 13*]

FIRMANA: On the thirteenth day, they considered the matter concerning the sentence of the external court; and it is entirely just. The declaratory sentence in this case is not only not issued by the judge, but is most doubtful, because of prejudicial questions that must be resolved, namely, whether an extraordinary prescription has occurred, and whether, in fact, a law that is contrary to custom has been repealed in the diocese in question. Therefore, the possessors should be favored. Regarding the question concerning the Bishop, namely, that they insist that the Constitution of Gregory XIII, which commands that, beyond the mountains, within three months from the day of appointment, possession of the benefice must be taken, cannot now be observed, because the government delays the royal license for several months; the solution seems to be sought from that principle, "legitimate impediments suspend the law," which principle, as is clearly demonstrated by Flaminius Parisius, 1, question 13, can also be applied to this matter. Therefore, it seems that the Most Reverend Fathers can hope that the Bishop, with regard to past appointments, will grant a dispensation, at least as a precaution for such appointments made; with regard to future appointments, they should observe the most wise Constitution of Gregory XIII, provided that they are not aware of a contrary, legitimate custom. With the above stated, the question was asked: what response should be given to the request?

RESOLUTION: After the matter was discussed by the Sacred Congregation of the Council on January 20, 1894, it was decided to give the following response: For the sake of the dispensation, according to the request concerning the past, let the words be spoken with the Most Reverend Fathers, as a precaution; but as for the future, the rescript of the Constitution Humano vix iudicio must be observed, unless it is otherwise.

FROM WHICH THESE POINTS ARE DERIVED:

I. Resignations of benefices, which are made in the hands of the Ordinaries, must be subject to the manner and form prescribed by Gregory XIII in the Constitution Humano vix iudicio, so that fraudulent agreements and many inconveniences may be eliminated.

II. The manner and form transmitted by the Pope must be observed everywhere and always, excluding any resignation from this prescribed manner.

[*Latin ed. p. 14*]

14. In FIRMO, to the members, any publication of equal value is permitted, under penalty of nullity. III. It has not appeared that, through contrary

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custom, the pontifical provisions of this kind have been abrogated, so that they still remain in full force, and are to be observed entirely. UTINENSIS. DECREE OF THE DECANATE AND UNION, January 20, 1894, Session 25, Chapter 12, Concerning Reforms. This controversy was first presented to your most esteemed Order in plenary assembly on July 25, 1891, under the following question: "Whether the opinion of the Archdiocesan Curia of Udine should be confirmed or rejected in this case; it was decided by decree: 'The opinion should be confirmed and understood as follows: That, considering the obligation of the Chapter to provide for the pastors of the churches a suitable provision for their honest sustenance, the Archbishop should report on the active and passive assets of the quartes and nov." (1). When the pastors of the parish churches did not comply with this opinion, they petitioned and obtained a new hearing; therefore, the cause was again presented to the Sacred Congregation on January 28, 1893, but was not decided, because, at the request of the pastors, a postponement was granted. SUMMARY OF THE FACTS. A Synopsis of the Dispute. The Defender briefly recounts the origins of the Chapter of Udine, concluding that, up to the celebrated decree of Patriarch Barbaro, no right was granted to the Chapter in the institution of Vicars Curators, because, especially, they did not possess true parochial benefices. DEFENSE OF THE PASTORS. (1) Recole, Vol. XXIV, 224 and following.

[*Latin ed. p. 15*]

UDINE. 15. Subsequently, he insists on the decree of the Vicar Martin in the year 1446, in which, because of the necessity of caring for souls, due to a greatly increased number of faithful living in a region exposed to heavy rains and floods, four other churches were established for the administration of the Sacraments. Then, recalling the deliberation of Patriarch Grimani regarding the establishment of true parishes for the same reason, in obedience to the decrees of Trent, he interprets the decree of Patriarch Barbaro in the year 1595, which established the existing parishes, and concludes that the Patriarch established truly distinct and independent parishes from the mother church. And he proves this because the Patriarch, in order to demonstrate the necessity of establishing new parishes, used almost the same words that had been spoken by Vicar Martin: "Considering the size of the place... such a large population... in the head of the City... the distance of the roads, etc." and by Patriarch Grimani: "that city which, having multiplied in a large number of people, and therefore one church alone is not sufficient for the spiritual care of all." Therefore, he says, since all, at a long interval of time, conspired in the same and identical opinion; it becomes clearer that all that which is required by the Council of Trent for the erection of new parishes, from chapter IV, session XXI, was present. After relating and examining, in other words, the aforementioned decree to demonstrate the true erection of new parishes, finally, the defender cites

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these words: "Finally, with God's grace, for the good of the distribution of parishes, having executed the aforementioned decree of the Council of Trent, we have considered it necessary to divide and distribute the entire City into eight parts, that is, into eight parishes, as we distinguish in the present decree, and we pronounce it divided and distinct," and he concludes that these words clearly express the division of the territory of Udine into several distinct parishes; truly, he says, if parishes already existed, and the matter concerned only the constitution or assignment of boundaries, in this case, it would certainly have been necessary to name the existing parishes in the very decree, and the boundaries of Fismes.

[*Latin ed. p. 16*]

16. BUT, on the contrary, since other Parishes did not exist, besides the Mother Church, it follows that the words of the decree: "divided, distinct into eight Parishes," cannot be understood except in the sense of the Council of Trent, Chapter IV, Session XXI, that is, concerning the true and proper erection of new Parishes. The advocate also cites these words of the celebrated decree: "We forbid to all and to each parish priests and curates, and to priests of whatever rank, who, under whatever name and title, exercise care of souls in any of the parochial churches, or in any curacies in this city, under pain of suspension from divine offices, and of other penalties at our discretion, according to the transgression, that each one should be contained within his own defined boundaries, and that no one should dare to transgress or confuse the boundaries of the parish, except in a case of necessity." And he observes that, whether they will or not, the adversaries could not understand, in the words cited, "priests of whatever rank," except as referring to the canons and their Dean. Indeed, since the other parish priests were equal among themselves, and ranks or dignities existed only within the Chapter, the Patriarch wished to provide that the canons and the Dean themselves would not reach out into another's field, as he later declared more openly himself. The patron also approves the erection of new Parishes from the subsequent part of the decree itself, because, on the same day that the aforementioned decree was sanctioned, the patriarchal chancellor, in the public hearing chamber, announced it in the presence of ten canons and the Dean, and no one of them opposed anything to the contrary; nor, from the publication of the same decree, were all the fathers, priors, custodians, vicars, and presidents of monasteries summoned, so that they would completely respect the newly erected parishes and would not usurp their rights, as explicitly stated in the act of publication. Because the adversaries, contrary to these facts and other facts cited by the patron of the parishes, present the decree of the year 1597 confirming the right of the canons to the institution of vicars and curates, the patron raises doubts

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regarding its authenticity.

[*Latin ed. p. 17*]

UDINE. In the year 1597, seventeen decrees were issued, authored by a certain Sacred Professor, Aloysius Fabris, Prefect of the archiepiscopal archives of Udine; but most importantly, another decree from the year 1606, also by the same Barbaro, served as a correction of the previous one, in which it was decreed: "That the aforementioned chapter prohibits any act of spiritual jurisdiction, even the slightest, unless it demonstrates privileges, and an unchangeable custom." Furthermore, when acting as Defender in a matter concerning tithes or quarterages, he states that he can do nothing better than to begin his argument from the opinion of the very Patron of the Chapter. Therefore, when he himself, in his most recent Restrict, states: "Maintaining our thesis, that there has never been a division of the old and unique parish, it follows that the right to collect the quarterage has always remained with the Chapter, as the sole parish of the entire city"; conversely, maintaining the opposite thesis, that a true division has indeed occurred, due to the canonical erection of seven new parishes following the Council of Trent, it follows that the right to collect the quarterage has passed to each parish, within its own territory. Therefore, the Patron continues, since the care of souls for the entire city has been divided into eight parts, or parishes, fully and legitimately, according to the original institution, the right to collect the quarterage has passed to each individual parish. This is based on justice, on natural and common law, and on the decree of the Council of Trent, Chapter IV, Session XXI: for, "the laborer is worthy of his wages," and "he who tends the flock should also receive its benefits." Finally, the Orator points out that, in the new Summary of the Chapter, a schedule of the Chapter's annual expenses is mentioned, which are said to amount to the sum of 25,164.91. However, on the contrary, according to the testimony of the Fiscal Office, dated February 13th of the previous year, it is stated that: "From the declaration of December 12, 1871, 'the following annual burdens are shown, which are borne by the 'revenues of Manomorta of the Metropolitan Chapter of Udine,' 'Total: 8,072.24 lire.'" It must also be noted that the Chapter declared a smaller amount of expenses to the Fiscal Office; indeed, the purpose of the declaration of burdens is to ensure that, in proportion, someone is exempted from the payment of taxes. Therefore, Acts, Volume XXVII, section G C C XIII, 2.

[*Latin ed. p. 18*]

18 UDINE. It would be absurd to suppose that the Chapter declared less than one-third of its assets to the Fiscal authorities. On the other hand, the Patron demonstrates that the assets of the Parishes are entirely appropriate and, in fact, considerably greater than those declared by the Canons,

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according to the testimony of the Syndic of Udine. The Patron states that, according to the testimony of the Fiscal authorities and the Syndic, the economic situation of the Chapter, after deducting its liabilities, amounts to 3,882 florins; while the assets of the 8 parochial benefices, after deducting their liabilities, reach the sum of 2,404 florins. Therefore, he concludes, each Canon receives more income than the combined income of the 8 Parishes. With these facts in mind, and since the Chapter has not presented further documentation in favor of the Parishes, the intention was to reconsider the matter. Whether the judgment of the archiepiscopal court of Udine should be confirmed or overturned in this case. RESOLUTION. The Holy Congregation, after deliberation on January 20, 1894, decided to respond: "In the deliberations, taking into account the facts presented, and after further consideration..."

VARSOVIA. Dispensation for MARRIAGE. February 24, 1894. Session 24, chapter 1B, regarding the matter. SUMMARY OF THE FACTS. Joseph Ciesielski, from the village of Nowy Devor, in the diocese of Warsaw, having previously entered into a preliminary agreement, at the age of 29, contracted marriage on May 31, 1891, in the town of Stara-Rawa, with Maria Zakrzewska, who was 19 years old. However, the character of the couple was not equal; for, as is unanimously reported, the husband was devoted to piety and the interior life.

[*Latin ed. p. 19*]

WARSAW, November 19th. Whatever delights the senses are presently turned away from the heart; the woman, on the contrary, did not recoil from them, but, when she was 17 years old, she was seduced by a certain wicked man who abused her innocence, and she conceived a child, which, however, died shortly after birth. Joseph had made a vow of chastity before the marriage, which he intended to observe in the marriage, and, three weeks before the wedding, he set a condition for Mary, namely, that they should live together in chastity, as a brother with a sister. Mary, captivated by blind love and fearing the dissolution of the marriage, disregarded the exhortations of Lady Suffczynska, and all obstacles, and gave her consent, but, as she now asserts, falsely, feeling differently in her heart and mind, hoping that "this condition would not last long after the marriage." Shortly after the marriage began, the woman, embarking on the partnership of married life, went to the home of her husband, and there she spent about a month, although not continuously, with her husband; however, it appears that the newlyweds never used the same bed, and no signs of love passed between them. During this time, the husband led a separate life from his wife, and although she spent several nights in the palace of Lady Obeka, to whom she was a servant, where her husband also resided, but separately and on the upper floors, together with the other maids. For this reason, Mary began to fall ill; and Joseph, not wanting to live conjugally

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with her, persuaded Mary to leave him completely, which, in fact, happened on November 11th of the year 1891. A few days later, Mary went to the Archbishop of Warsaw, demanding the dissolution of her marriage to Joseph Oiesielski, on the grounds of the husband's impotence, which she suspected and which some asserted, and she requested that the marriage be annulled. The Archbishop instituted a trial, and after a formal legal process, the proceedings were made public. The lawyer for the plaintiff, having learned of these facts, requested that Oiesielski, who was not suffering from impotence, nevertheless had not attempted any carnal intercourse, due to a vow of perpetual chastity that he had already made, be granted an annulment.

[*Latin ed. p. 20*]

20 WARSAW. Such proceedings should be sent to the Apostolic See in order to obtain the grace of a dispensation concerning a marriage that is valid but not consummated. Synopsis of the Arguments. OPINION OF A CANONIST. From the account, it is evident that the circumstances of this case follow the ordinary procedures for such petitions, to the extent that the elements necessary for forming a judgment, which are present in other cases, are entirely lacking here. The physical integrity of the woman, which is almost certainly an indication of non-consummation, is not present here, because she was violated by another in her youth; nor is there impotence on the part of the man; this claim, if ever alleged, is completely refuted by the testimony of experts. They have found no signs of permanent impotence, and they declare that no impotence should be admitted, except perhaps some aversion from the woman, born of onanism, to which Joseph was devoted when he was younger. But even these matters are problematic and will have little value in determining such a controversy. Only the testimonies of witnesses remain, and indeed, in a matter that scarcely allows for eyewitness testimony, and the presumptions attached to these testimonies, to overturn the presumption of the law and to legally rule in the opposite direction. On the other hand, many witnesses are "of every age," and all are, in every way, of the best character. These are honest and religious people who regularly attend the Sacraments. Furthermore, the witnesses of the seventh degree unanimously offer testimony regarding the religion and utmost truthfulness of both Mary and Joseph, so that it is not surprising that both the Theologian and the Canonist of the Warsaw Court, after a thorough discussion of the entire process, have come to the opinion that the marriage was not consummated; a judgment which I also confess to embrace, although I am aware that the difficulties that can be raised against this conclusion are very serious. Furthermore, everything else in the process was carried out in accordance with the Benedictine Constitution, so

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that, without delay,

[*Latin ed. p. 21*]

WARSAW. 21. We can now address the fundamental question: whether the marriage of Joseph and Mary remained unconsummated. This is primarily and consistently affirmed by the spouses themselves, under oath, in their judicial confessions. Indeed, Joseph had already made a vow of chastity beforehand. This is not a fabrication, as can be seen from the proceedings, for he testifies that he spoke with at least two people about this matter before the marriage. Furthermore, the confession of the spouses, even when judicial, although it constitutes one of the types of evidence in matrimonial cases, does not immediately have probative force; rather, it often lacks all force by itself, due to the risk of collusion between the parties. Therefore, it must be examined and compared with the established rules of sound judgment, and with other types of evidence, so that it may be determined whether it presents the circumstances of the matter truthfully, or whether, on the contrary, it is the result of collusion. However, on the other hand, a testimony that is suspect in the eyes of the law is not, for that very reason, held to be false; this is inferred from the Instruction of the Sacred Congregation, 1840, and from Chapter V of the Letter concerning Frigidity and Malefactions. The examination by a seventh relative, or by relatives up to the seventh degree on both sides, is intended solely to verify the veracity of the confession, in relation to the religious and moral standing of the spouses. Indeed, Cosci, who treats this matter excellently, in *De Separatione Toti*, book 1, chapter 16, states: "Witnesses can provide proof of the lack of consummation who testify that the spouses, after the marriage contract... always remained separate, and that they separated in the presence of other people, and all the more so if the testimony of the witnesses is accompanied by the assertion of each spouse, confirmed by oath, which equally excludes the consummation of the marriage." And further, in paragraph 22: "The spouses deserve all credibility if their assertion is supported by the testimony of witnesses, excluding cohabitation." Indeed, the same distinguished author cites Cardinal De Luca, *De Matrim*, dissertation 2, paragraph 16, and *Sacra Rota Decis.* 101, paragraph 5, to show how, in certain circumstances, the testimony of a spouse can destroy, and indeed has destroyed, a strong presumption of the law. The words of the Rota are: "Although a presumption... "

[*Latin ed. p. 22*]

22. VARSAVIA. "Although a presumption exists, both violent and legally valid, it admits of proof to the contrary based on the confession of the confessor himself." The presumption in the case before the Rota was founded on the cohabitation of Julius with Olympia for three nights in the same bed, a circumstance which scarcely admits of a greater degree of intimacy,

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and yet, although the circumstances indicated that the confession was most likely true, it prevailed over the violent presumption of the law. Indeed, in similar cases, circumstances, whatever they may be, cannot produce metaphysical certainty; in moral certainty, or in degrees of probability, it is necessary that the entire matter be considered; therefore, it is permissible to infer that there may be some degree of probability which is equivalent to moral certainty, and which, for that reason, would be sufficient to sustain any fact against a contrary presumption, even the most violent. A less violent presumption exists in the present case. The betrothed remained together in the same room for only a few nights, and certainly not in the same bed; moreover, after the first night, they do not appear to have been left alone during the entire first week after the marriage; and even afterwards, whenever they met, the circumstances, as we shall see, exclude consummation; so that, if we exclude the first few days of marriage, it seems morally certain that it never took place. What reasons can be put forward that suggest there was no carnal intercourse between the betrothed during those first nights? A very strong argument is the disposition of Joseph, which has been amply demonstrated in the preceding and subsequent events to his marriage; namely, the intention of always maintaining continence. It is of little consequence whether this intention arose from simple devotion or exaggerated religion, or rather, whether it was devised to conceal his impotence, as Mary suggests. What is of interest to us at present is the simple fact of this intention, and the constancy of Joseph in maintaining it. Let us hear the witnesses who can speak of the character and disposition of Joseph; and first of all, the ecclesiastical student Ryniewicy, not only because he is...

[*Latin ed. p. 23*]

WARSAW. 23, with all exceptions, but also because he had known Joseph since 1884. "Since the year 1884, I knew Joseph Cielski in the district of Nowo Minsk: I became acquainted with him in the church where we attended Mass daily, and Joseph almost daily approached the Holy Communion; we were familiar with each other. — I was convinced that Joseph was a devout, moral, and honest man. He could not possibly commit any lie, let alone perjury. — Furthermore, Joseph's friends living in the districts of Nowo Minsk and Warsaw were astonished by Joseph's intention to marry, since he had often told everyone that he would never marry, and if he were to marry, he would live with his wife as a brother lives with a sister." These statements are perfectly consistent with what is widely reported by other witnesses regarding Joseph's aversion to marriage—regarding the aforementioned unhappy fate of Mary in her marriage to a man of this kind—and regarding the title of Saint Joseph that was attributed to him by his colleagues. It is established that he was not only a non-religious man, but rigidly so, pharisaical, as one of the witnesses affirms. These things

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concerning Joseph's character and intentions are wonderfully confirmed by the testimony of his mother, a woman of the highest religion and probity among all. No one can fail to see how abnormal these circumstances are in relation to marriage, and how highly probable they make the presumption against consummation. Joseph was known to be of extraordinary sanctity among his acquaintances and neighbors, and especially among his colleagues in domestic service. Secretly and openly, he protested to not one, but many, not once, but repeatedly, that he wished to preserve a life of continence. The betrothed man wanted to withdraw, while Mary showed herself hesitant regarding the intention of preserving chastity, and only after accepting this condition again, under the influence of Mrs. Suffczynska, did she agree to the marriage. All of these things are certain, testified to and confirmed in the process, and with these established, the highest probability of non-consummation emerges, which corroborates and confirms the judicial testimony of Joseph. Indeed, who will believe that a pious and religious man would change his vow or intention at a particular moment in time?

[*Latin ed. p. 24*]

24. VARSAVIA. A situation that has persisted for many years, renewed only a few days prior? Or, if we consider the statements made about his religion, who would believe that he would face the ridicule and derision of his friends, who certainly would not spare "Saint" Joseph, succumbing to feminine wiles, after so many declarations to the contrary? Saving the better judgment of E.E. and P.P., these things are sufficient to undermine the "presumption of law and de jure" that may arise concerning the cohabitation of spouses in this case, and furthermore, they confirm the testimonies against consummation, not only of the marriage, but also of the domestic arrangements, where they themselves resided. Moreover, from the testimony of all, it is clear that Joseph was a man of the most devoted and pious spirit, of a timorous conscience, indeed, scrupulous, incapable of even a slight lie, let alone perjury. He confesses that he, as a young man, fell into a secret vice, but that, converted, in order to appease divine vengeance, he bound himself with a vow of chastity; and it is perhaps due to this aversion to carnal intercourse with women, with which he declares himself always to have been affected, and which may have arisen from the aforementioned vice, that the doctors believe. This vow he has not concealed in any way. He affirms it before his wife, his friends, and the Ecclesiastical Judge. Therefore, it seems certain; and, considering his piety towards God and his timorous conscience, it is hardly believable that he, having disregarded his vow, would have consummated his marriage. Nor does this conclusion contradict certain hesitations in his statements regarding this matter, e.g., when at one time he seems to admit a certain impotence, saying "they want the wolf to plow" – "which is impossible for

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me," and at other times "that he is suffering in his heart and does not want to expose himself to sudden death," for, besides the fact that such expressions confirm the fact of "non-consummation," they are easily reconciled with the vow. From what has already been presented in the proceedings, it is sufficiently evident that the betrothed suffered pressures, and perhaps grave ones, especially from the betrothed's patroness, the "magnificent" Suffczynska. In the circumstances of the marriage contract, they probably said that the vow was of little value, since it only impedes a petition, not the fulfillment of a debt, while the right of the other spouse remains intact. It is no wonder that a timid man would devise other things.

[*Latin ed. p. 25*]

WARSAW. Twenty-five reasons for excuse, so that he might extricate himself from these difficulties. And thus, all that is alleged concerning this matter are consistent with each other, and all concur in one thing, namely, that the marriage was not consummated. This conclusion appears to be true from another aspect, namely, from the analysis or examination of the period of time during which the spouses lived together. Both the circumstances and the witnesses seem to exclude, morally speaking, the possibility of the consummation of the marriage. Considering all of these things, and the opinion or reputation common among all who knew the betrothed concerning the "lack of consummation," it seems difficult to depart from the opinion already stated. It is true that there is here neither physical nor metaphysical certainty, but it is also true that there are so many and such great supports, in all the circumstances, in numerous witnesses, all saying the same thing, and none of whom are subject to any suspicion, that from the accumulation of testimonies, a moral certainty arises, such as is required and suffices, even in matrimonial cases, as is evident from the decisions of several SS. [Sacred Congregations]. Therefore, in answer to the first question, I believe it must be concluded that there was no consummation of the marriage of Joseph and Mary in this case. The second question can be answered briefly, namely, whether there are sufficient reasons for obtaining a dispensation from the SS. [Sacred Congregations]. As it is clear today that RR. PP. [Most Reverend Fathers] can, when a just cause exists, grant dispensations in valid marriages, it is also true that this cause does not always need to concern "the public good," as was taught by many in ancient times. This opinion is now rejected by the schools of Theology and Law. It was already rejected by Caietanus, Opera, vol. 1, tract. 28, and later by Pignatelli, who has this: "And although some may wish the cause to concern the public good... the truer and more common opinion is that it suffices for it to concern private good and private utility." Vol. I, Consult. 148, n. 9. But no private good is more important than to remove a certain scandal and the danger of eternal salvation. Both are present in this case: Mary has already suffered greatly, and yearns for conjugal life; she is still

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very young, and, as far as is known, is not...

[*Latin ed. p. 26*]

26. WARSAW. The matter is held in abeyance. On the other hand, there is no hope that Joseph will change his mind, especially after so many declarations made by him during the course of the proceedings. Therefore, who can fail to see that obliging Mary to enter into this most unfortunate union would simply expose her to the danger of incontinence? OPINION OF THE THEOLOGIAN. The Consultor presented a lengthy account of the events that preceded the marriage, and said: "I have placed these before your eyes so that she herself may speak and declare whether all the conditions are truly present for obtaining a dispensation from a consummated marriage. As for the truth of the lack of consummation, I say nothing. And this is clearly evident from the records themselves, and the Canonist and the Theologian of Warsaw have exhausted all the arguments most validly, so that nothing remains to be said. I would only like to add something regarding the causes for a dispensation from the marriage in question. If a marriage that is not consummated, even one entered into without the condition of preserving perpetual chastity, is dissolved, even though it was made after the marriage for the purpose of observing the evangelical perfection of one of the spouses, a practice that the Church has subsequently restricted to a solemn profession approved in religion, *Perrone, De matrimonio, vol. III, p. 498*; all the more should a marriage that is not consummated, which is doubtfully valid because of the preceding intention of preserving perpetual chastity, be dissolved. However, if I am not mistaken, this is the case with the marriage in question. R. P. Wernz, in the fourth book of the Decretals, on matrimonial law (Rome, 1890-91, p. 257), states: "If conditions are imposed for the future that are contrary to the essence of marriage... even if they are added by only one of the contracting parties, so that they are understood as part of the marriage contract, the marriage contract, whatever it may be, is without effect and null, by natural and divine law." I have noted "at least by one," but I maintain that Mary also consented to the condition, although she hoped that it would "not last long after the marriage." But is the condition imposed by Joseph contrary to the essence of marriage? R. P. Wernz explains there what kind of condition invalidates a marriage.

[*Latin ed. p. 27*]

WARSAW. 27 [of the month]: "If a marriage contract is celebrated in such a way that not even the mutual right to the body is granted, or if a condition is added to the principal marriage contract, similar to a suspensive or resolutory condition, there is no doubt that such a marriage is not valid." This appears to be precisely our case. Joseph intended to enter into marriage with Mary "solely for this purpose, to conceal her past, and to protect her from the temptations of this world"; but under this single

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condition "that, under the pretext of marriage, he might more securely preserve his own and Mary's perpetual chastity." But let us hear further from Father Wernz: "If a certain secondary stipulation is added prior to the principal marriage contract, whereby, while preserving the true right to the bodies of the spouses, they renounce only the lawful use of that right, many and grave authors also consider such an accessory and prior stipulation, even if made in good faith, to be contrary to the essence of marriage, as Sánchez, Schmalzgrueber, Pirhing, and others hold. But the contrary opinion, which at least some of the adversaries consider to be probable, and to which 'much probability' is attributed, is rightly maintained by other learned men, such as Palmieri, Ballerini, Lehmkuhl, and others." Therefore, if anyone were to contend that the condition imposed by Joseph was of this second kind, then at least there would be doubt about the validity of the marriage. However, it is said that Joseph once told Mary, "if either of us suffers harm to our health, we will change our plans"; this is of no consequence. He may have said this in passing, convinced, as he was, that continence could not harm health, and therefore, later, when his wife asserted that she was ill because of continence, he refused to believe her; or he may have said it in the same sense in which he later said, "that he could abandon her, if he wished." No one among the witnesses, nor even Mary herself, doubts that there was an absolute, certain, and manifest condition on his part. I see here that one exception could be made, so that it would not be a matter of dispensing with the marriage, but rather of advising that the marriage be consummated, nor to this, that the consent be renewed in a case of doubt.

[*Latin ed. p. 28*]

28. VARSOVIA. The revalidation of the marriage would be necessary, since neither spouse had any doubt about the validity of the marriage due to the condition imposed; therefore, the very use of the marriage would suffice for its revalidation. The following exception exists. One of the physicians, in his report, states: "From the ambiguous explanations, I believe that he may still be suffering from onanism at this time. The cause of not fulfilling the conjugal duty seems to me to be onanism, which was practiced by Joseph previously, and probably is still practiced by him. Indeed, it is certain that 1° it is difficult for an onanist to break free from this habit, and 2° the onanist feels an abomination at the act of intercourse with a woman." However, it is also certain that 1° the legitimate use of marriage is the best remedy for onanism, and 2° if Joseph were truly still addicted to this vice, it would certainly be better to grant them a dispensation from the vow of chastity. But, given the known devotion of Joseph and his manifest sincerity, the suspicion of that physician cannot stand. Therefore, considering all of these things, since there is reason to doubt the validity of the marriage, and since, moreover, the moral certainty of both spouses is proven by their

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sworn confessions, and since the testimonies of the witnesses confirm everything said by the spouses, and since all the circumstances of time and place have been carefully and accurately examined, and no contradiction has been found in any of them, and since there are grave and just reasons that would warrant a dispensation, namely: the husband's firm intention to observe the chastity he had vowed to God, the wife's loss of health and the danger of incontinence; finally, since both spouses agree in requesting a dispensation from the marriage, — "the husband said that he would, if he could, go to Rome on his knees to obtain a divorce" — I believe it is necessary to consult with the Most Holy [authority] regarding the dispensation from the marriage in this case.

O O. OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE, *ex officio*. I consider the statements made by the spouses Ciesielski to be completely absurd and improbable, as they seek to break the marital bond properly entered into on May 31, 1891. Mary, who plays the role of the wife, with the consent of her husband Joseph, does not...

[*Latin ed. p. 29*]

WARSAW. On the 29th, the marriage was either suspended due to suspected impotence of the husband, or due to the asserted condition of maintaining virginity (thus) in the marriage. But as the proceedings progressed and he saw that one and the other impediment were fading away, he finally sought a dispensation regarding the marriage, which was already valid but not consummated, as a last resort. However, he does not thereby improve his case, since the matter of the non-consummation of the marriage and the reasons for the dispensation are entirely separate. In truth, it is reported that the spouses lived together under the same roof from May 31, 1891, until November 11 of the same year, and that they slept together in the same room. Such a relationship certainly suggests the consummation of the marriage, indeed, it is a matter of law and, in law, is considered certain. "For nothing," says the Glossa in can. 4, cap. 3, "is so established in law and in all matters as that from the cohabitation of spouses, it is presumed, as a matter of law, that the marriage has been consummated; not only, I say, as a matter of law, but also as a matter of fact." However, I do not deny that contrary evidence can be given against such a presumption; but the weight that such evidence must have is gathered from the doctors, who with one voice proclaim that it must be strong and convincing. Pignat, vol. 1, consult. 149, no. 1, states: "The non-consummation must be proven by most convincing arguments, indeed, by abundant evidence." And the Sacred Congregation in Comen. Matrim. 17, December 1768, after teaching that from the cohabitation of spouses not only a presumption arises, but a MOST COMPLETE PROOF, declares that it cannot be refuted except by contrary, MOST CONVINCING EVIDENCE. Furthermore, the most convincing evidence in this case is entirely lacking: for Mary offers no proof

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of her virginity, since she was already a mother before the marriage; and, on the other hand, three expert physicians, at the order of the judge, examined the body of Joseph and testified that he suffers from absolutely no impotence. Lacking these proofs, namely, the virginity of the woman and the impotence of the man, I see no value in the union of the spouses.

[*Latin ed. p. 30*]

30. VARSOVIA. Confessionem vel vicinitatis rumoribus, sicut docuit Coelestinus III in cap. 5 *de eo qui cognoscitur*, ibi: "Aduertere possumus vobis, fratres, quod propter confessionem vel rumor vicinitatis, non debent separari, cum interdum nonnulli inter se contra matrimonium conare possunt." Sed rumor vicinitatis non ita iudicandus est validus, ut, nisi rationabiles et fide dignae probationes adhibeantur, "possit bene contractum matrimonium irritari." Et merito, quia coniugi, testes cum in causa propria sunt, excludere non possunt timorem collusionis et mendacii; alii vero testes in causa vocati, quamvis de coniugum honestate et religione fidem praeferant, eorum dictis se credere confitetur, nonnullaque auxilia ad id referant, probationem nihilominus, quae coarctata appellatur, praebere non valent, et ideo nec vehementem praesumptionem consummationis matrimonii excludere. Ceterum, decantata sponsorum religio et sanctitas, minime confirmant facta quae sequuntur. Mulier quidem de seipsa in iudicio testata est: "Tempore nostrae cohabitationis, liberos non habui, sed uno anno ante nuptias, infantem habui, qui aliquot mensibus ante nuptias mortuus est." Vir autem deposuit: "Tempore pueritiae meae, per aliquot annos continuos, saepe fui reus onanismi, forte quotidie." Antonina Suffczynska Stara-Rawa, de eodem viro iurata, deposuit quod: "Famuli huius palatii Iosephum esse mihi adhortabantur, et ante nuptias, Mariae Zakrzewska dicebat eam ab marito tam devoto gaudium non experiri, qui, cum eam osculasset, ad sacramentum Poenitentiae accederet...." "Praeterea, admitto eum ab obligatione maritali abhorrere, et verisimiliter esse impotentem, cum usque ad vigesimum annum onanista fuisset; de qua consuetudine et peccatis vitae, mihi et Mariae locutus est. Deinde, certa vestigia habeo hanc consuetudinem forte usque ad hodiernam diem perdurare, ex quo sequitur abominatio erga mulieres. Ipse Iosephus semel mihi dixit se inhabilem esse ad immutandam vitae consuetudinis."

[*Latin ed. p. 31*]

WARSAW. On the 31st, with his wife, although he later interpreted his words as having been spoken in another sense. The expert physician Sierpinski reported in writing to the judge: "Joseph Oiesielski confessed that in his youth (at the age of 17), he was an onanist for several years; from ambiguous explanations, I believe that he may still be an onanist at this time, although perhaps not indulging in his passion so frequently." And in

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the judicial examination, the same expert physician affirmed: "I can offer many arguments that he is *STILL* practicing onanism, for which reason he does not want to consummate his marriage with a woman, which is common among onanists." It would be superfluous to argue about the reasons for the dispensation after this. However, it should be noted that, if Joseph were still addicted to the vice of onanism, as the witness Antonina Suffczynska Stara-Rawa and the physician Sierpinski believe, it would certainly be more conducive to the eternal and temporal salvation of Joseph if the Warsaw Tribunal were to encourage him to use the legitimate use of marriage, granting a dispensation, if necessary, from the vow of chastity that he may have made before marriage. And I believe it is even more important to insist on this, because the asserted condition of maintaining chastity in marriage does not introduce any doubt to me about the validity of the marriage. Indeed, the aforementioned witness Antonina Suffczynska Stara-Rawa, being thoroughly informed about this matter, responded in this way: "Mary accepted the condition of her husband only with a feigned mind, hoping that the force of the same would not last long after the marriage. She told me about this several times before the wedding and on the day of the wedding, as she was setting out for the church. When Mary said to Joseph Oiesielski, 'We will also try to live in this way for a time,' and Joseph Oiesielski responded, 'We will also try to live in this way initially for a time, and if either of us suffers harm to our health, we will change our plan,' it is clear that the proclaimed condition of observing chastity in marriage does not refer to a perpetual renunciation of the use of marriage, and much less does it touch upon the fundamental right to use marriage. With these things in mind, the assumption must be dispelled.

[*Latin ed. p. 32*]

32. VARSAVIA. Whether it is permissible for the Most Holy Congregation to grant a dispensation from a marriage that is valid but not consummated in a certain case. RESOLUTION. The Sacred Congregation of the Council, having considered the matter on February 24, 1894, decided to respond: Affirmative. FROM WHICH YOU MAY GATHER: I. The proof of non-consummation can be completed by the sworn assertion of both spouses, and even more so if the testimony of witnesses, also under oath, is added. II. The cohabitation of the spouses for several nights constitutes a strong presumption of consummation, both in law and de jure; however, this presumption appears to be able to be rebutted by a confession that is most likely true, especially if the confession is made to the detriment of the confessor himself. III. The presumption of consummation is less forceful in the case where the spouses have remained alone together in the same room for only a few nights, and never in the same bed; and when there are truly abnormal impediments to this marriage. IV. Since there is a just cause for a dispensation from a valid marriage, the more true and common opinion

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is that this just cause should not always consider the public good, but it is sufficient if it considers the private good, and the private utility.

THE POSTULATE OF THE BISHOP OF CASTRIMARIS REGARDING THE ADMINISTRATION OF BAPTISM. January 20, 1894. Through summary petitions. SUMMARY OF THE FACTS. The Bishop of Castrimaris, in a report of his Church transmitted to the Sacred Congregation of the Council, states the following in Chapter III, concerning Postulates: It has been found in this Diocese that, for equal reasons, it is customary to administer baptism at home, completing...

[*Latin ed. p. 33*]

CASTRIMARIS 33: Concerning all rites, especially among prominent families. I referred the matter to the law of the Ritual; by which it is permitted only in the case of the infant's salvation; in which case, I allow that only water be administered at home, postponing the other ceremonies until the time when the child can be brought to the Church. The same is tolerated because of an unusual contrary custom; therefore, I ask whether I should proceed in this manner, or whether I can allow exceptions, even regarding the other ceremonies, to be performed at home.

Synopsis of the Discussion. To briefly address both sides according to accepted custom, it is best to first recall that, according to the Extravagant of Clement, namely, in the title concerning Baptism, it is forbidden to administer baptism in halls or chambers, or in other private houses, under penalties to be determined by the Bishop, but in churches, in which there are fonts specially designated for this purpose; this prohibition remains even if those who are baptized there are later brought to the sacred font, so that the customary ceremonies and rites may be celebrated in the church. Only in this case are there two exceptions, namely, first, with regard to the children of kings and great princes, to whom, if they request it, baptism may be administered in their homes, namely, in their chapels or oratories, but the water must nevertheless be blessed according to the custom. The second exception is if infants cannot be brought to the church without danger, a danger which is explained by the Glossary of this chapter, not only with regard to those who are to be baptized, namely, when they are in articulo mortis, but also with regard to those who are to bring them to the church, as is stated in the Roman Ritual, in the title *De Baptismo*, chapter 8, § 3; D'Annibale, *Summa Doctorum Moralium*, book 3, number 137, etc.; De Angelis, *Praelectiones Juris Canonici*, book 3, title 42, number 3. But in the matter itself, if one considers what the Bishop has stated, it does not seem that the reasons are present which are expressly required by the law to grant an exception. It truly seems that it is not a matter of necessity, for which provision has already been made by the Most Reverend Prelate, but only a matter of convenience. I do not believe that the nobility of a family should be sufficient to derogate from the law, since, according to CUSTOM,

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THIS IS TO BE REJECTED. Acts, Volume XXVII, page CCCXIII, 3.

[*Latin ed. p. 34*]

34. CASTRIMARIS offers a gloss on the words of St. Clement, and presents a more accurate opinion of the Doctors, stating that princes are not considered princes unless they are powerful, being equal to kings. See Riganti, in *Reg. Cariceli*, 42, no. 117; Suarez, Dist. 31, sect. 2; *Rituale Romanum*, loc. cit.; St. Alphonsus de Liguori, *Theologia Moralis*, book 6, no. 118. Furthermore, while Ciernen and the *Rituale Romanum* grant permission to baptize the children of kings or great princes outside the Church, provided it is done in their chapels or oratories; these oratories are often, in the cases that Castrimaris' Ordinary presents, demonstrably absent; therefore, in these circumstances, there is reason to fear that due obedience to divine matters is not rendered; and, what is more serious, that an opening is provided for any family to presume to have baptism performed in their own homes. A CUSTOM TO BE MAINTAINED. It also seems important to remember the faith and devotion that are greatly aroused and increased by the solemn administration of baptisms in churches by nobles. However, it must be considered that in the diocese of Castrimaris, a custom has taken root by which the Ordinary grants the faculty of administering baptism at home. It is well known that custom possesses such force in both jurisdictions that it is equal to written law. See the text in the *Leges sine scriptis*, Institute, title on natural and civil law; Peretius, in *Commentariis Instituti*, on the aforementioned law; Voet, in *Commentariis*, on the *Pandects*, title 1, no. 30; and book 3, *De praescriptionibus*, section 6. Therefore, it is not surprising that the Doctors unanimously teach that custom creates a better title than the law, and that it implies a privilege, even in matters of the Church, and can even prejudice Apostolic approval, even in acts of the Church that could lead to a decline in divine worship, as taught after Urban VIII in the *Constitutiones Romanus Pontifex*; Barbosa, *De pot. Episcopor*, allegation 25, no. 72; *Rota in Romana Oblationibus*, January 25, 1725, § 5; and the Sacred Congregation of Councils, in *Amnionen. Capellaniae*, September 16, 1780. This kind of custom does not seem to be one that should be abolished in the diocese of Castrimaris, provided that...

[*Latin ed. p. 35*]

35. CASTELMARIS: Let these conditions be observed, both with regard to duration and with regard to other necessary elements in such cases. Indeed, in these calamitous times, with faith lacking, harm could be done to the spiritual well-being of children, as if their baptism were unduly delayed; to which is added, especially considering the custom of the surrounding places, the danger of contempt for the orders of the Bishop. With these considerations in mind, it was determined what should

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be answered in prayer. RESOLUTION: The Sacred Congregation of the Council, having knowledge of the matter on January 2, 1894, decided to respond: The Roman Ritual is to be observed; with the exception of those cases in which the Bishop, for reasonable reasons, has judged it prudent to grant exceptions.

MELEVITANA DOUBTS REGARDING THE REDUCTION OF MISSES: February 24, 1894. Session 25, chapter 4, Concerning reforms. SUMMARY OF THE CASE: In the diocese of Melevitana, the synodal tax for the alms of Masses was established in the year 1892, amounting to nine "tare," corresponding to one and a half of our "libellae." The Bishop, at the urging of the clergy, considering the very increased price of necessities of life, deemed it necessary to raise the synodal tax to a Melevitan "scutum," equal to two of our "libellae" and somewhat more (folio 2, 15). The Bishop, wishing to apply this tax also to non-manual or imposed Masses, submitted a petition to the Reverend Fabric of the Divine Peter to the Sacred Congregation, in which he explained that the alms for Masses amounted to 1.50 Lira; however, since the necessities of life are now greater, he requested permission to raise the alms for Masses to 2.15 "libellae"; and, according to this standard, the pious legacies are to be regulated, both in a precise and demonstrative manner.

[*Latin ed. p. 36*]

36. He stated that he had done this in order to comply with the desires of the clergy. To this petition, the Supreme Pontiff deigned to confirm and approve this decree: "From the Audience of His Holiness – On May 20, 1892 – We, having heard the explanations presented by the Bishop, and also considering the particular circumstances, have graciously granted the requested reduction for the Legates for a period of seven years. To the same Bishop, We grant the necessary and appropriate faculties for its execution. Contrary opinions notwithstanding. L. f. S. f. Ir. M. Archbishop of Melitene. However, the Bishop of Melitene, in issuing the decree for its legitimate execution, encountered certain difficulties, especially those raised by the administrators of the Legates and by pious institutions. Regarding these difficulties concerning the interpretation of the execution of the decree, the Bishop informed the Reverend Fabric [referring to a specific office or department], who, however, replied to the Bishop that they would not respond to these questions. Therefore, the Ordinary of Melitene appealed to the Sacred Congregation [Sacra Congregatio], expressing his question in the following terms: After the decree was reported to the Reverend Fabric, it is doubted how this reduction should be understood, with regard to the fixed number of Masses, when the income of a certain *fundus* [estate, property], on which the burden of Masses has been placed, has increased to such an extent that the number of Masses established at the time of its foundation can be maintained without diminishing the benefit, which

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sometimes remained through the favor of heirs, or of a pious institution. For example, Titus left the burden of fifty Masses with the aforementioned alms at the time of the foundation of *fundus* A, which annually yielded 40 *scuta* Melitensis, or 8 *libellae* [units of currency]; the remainder was given with the favor of heirs, or of a pious institution. Assuming that the alms at the time of the foundation were half a *scutum* Melitensis, the sum of 25 *scuta* was paid for the aforementioned 50 Masses, leaving a remainder of 15 *scuta* through the favor of heirs or of a pious institution. Now, the aforementioned *fundus* yields 100 *scuta*, and the stipend for the Masses is increased to one *scutum*. The question is: I. Should the number of Masses established, as mentioned above, be reduced in accordance with the increased alms, namely to 25, leaving the increase in income to the favor of heirs or of a pious institution?

[*Latin ed. p. 37*]

I. Whether the same number of Masses established at the foundation should be maintained. II. And in the case where the revenue has increased, but not to the extent that the total number of Masses established at the foundation can be fulfilled, without prejudice to the benefit originally granted to the heir, or to the pious institution, whether and how a reduction should be made.

A Synoptic Discussion:

Firstly, it must be noted that the Sacred Congregation has resolved numerous questions concerning the use of the power granted to Bishops by a special indult to reduce the obligations of Masses. Thus, not only after the celebrated decree of the Council of Trent, session 25, chapter 14, *De Reformatione*, in which the Sacred Congregation granted the Ordinaries full authority regarding bequests for pious purposes, but also the Sacred Congregation, in Milan (lib. 5, decrees, page 38), interpreted the Tridentine disposition as applying only to the first Synod held after that Council, and to the obligations of Masses imposed before that Council; but after the Bishops had been granted special powers to reduce the obligations of Masses, as was done at the Council of Rome in the year 1725, in which it was granted to each Bishop present there, either in person or through a representative, to reduce the number of Masses assigned, according to the instructions given there.

The Sacred Congregation has given further resolutions concerning the limits of this power and the sufficient reasons for the use of such power: as can be seen in Benedict XIV, in his work *De Synodis Dioecesibus*, book 13, chapter last.

But another question must now be defined, which does not concern the validity and nature of the general concession, namely, whether any particular case is included in it, but it is asked whether a particular reduction of Masses already granted by the Supreme Pontiff for a certain case extends

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to this case. In other words, in the application of the general concession, the Bishop is the judge; in this case, he is merely an executor, because the grace has already been granted.

The Bishop of Melevitan will always keep this consideration in mind, with his wisdom, so that the sentences of the Most Holy Fathers,

[*Latin ed. p. 38*]

38. Whether it will be so or not, it will not grant a greater or a lesser extension. With these premises, it is clear that we are dealing here with a rescript concerning the lawful execution of a grace. Therefore, because it deserves a favorable, broad, and benevolent interpretation, as is fitting for the most learned in law. In this rescript, the Supreme Pontiff "graciously granted the reduction of the legate's dues, as requested, for seven years." However, the Bishop, putting his hand to the execution, observed that in some legates, expressly designated, actions were being taken to notably diminish the burdens of the masses, although for the heirs or legatees, the revenue from the funds was not only diminished, but increased, as is evident from the nature of the case. Therefore, the Illustrious Executor strongly doubted whether the execution exceeded what was requested and granted. This reason for doubting is based on the chapter "Concerning Rescripts" in "De Rescriptis," where Innocent III says: "But if, through such (or through ignorance, without malice) expressions or suppressions, even of the truth, letters have been obtained, which, whether tacitly or expressly, we would not have granted, the delegate is not to proceed to any extent." And all the authors agree, as can be seen in Fagnanus in the commentary on this chapter, that this legal prescription is stronger and more severe for gracious rescripts, in which, in the absence of fraud or deceit, nullity certainly follows by law itself. Furthermore, this deceit, not arising from malice, vitiates only the rescript in that part in which it falls, and Fagnanus states in book 1, chapter 5, number 72: "Simple deceit or ignorance, which was not the cause of the entire concession, but only of that part, does not vitiate the rescript in its entirety, but only to the extent that it was the cause of the concession"; and after confirming this doctrine with several authorities and decisions of the Holy Rota, it reasons thus: "because the defect must vitiate only to the extent that it enters into the substance of the act, so that the quantity of the infirmity of the act..."

[*Latin ed. p. 39*]

"MELEVITANA 39 measures the quantity of vice; and this is reasonable." Therefore, the ordinary of Melevitana justly doubted whether the vice of deception could infect only that part of the endowment pertaining to legates expressly designated. Furthermore, the reason for doubting in this case may arise from a different principle; namely, that legates expressly designated are established by a contract or quasi-contract between

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the founder and the heirs or legatees, whereby a certain number of Masses is established for a specific fund, and the heirs or legatees undertake the obligation to satisfy the expenses of these Masses from certain revenues of the fund. However, the Indult granted by the Apostolic See for moderating the number of Masses does not suffice with regard to obligations assumed by contract; therefore, the Sacred Congregation declared that the reduction made was not to be maintained, as evidenced in Macerata, November 15, 1687; Montalto, September 3, 1716; Bergamo, July 10, 1728; Milan, April 7 and September 1, 1731; Rome, April 18, 1733; Faenza, February 1734; and January 14, 1739. – Pope Benedict XIV, in his work *De Synodo Dioecana*, book 13, chapter without number, paragraph 26, reasons as follows on this matter: "And we ourselves, having diligently examined the decrees issued after the Council of Rome by the Congregation, to ascertain whether they, except for Masses accepted by contract, had established a new system and a new rule for judging, have certainly found that whenever a controversy arose regarding reductions of Masses, made by General Ordinances, in virtue of the power granted by the Council of Rome, they had reduced the number of Masses accepted by contract, the Congregation declared such reductions to be null and void; as can be seen in Rome, April 18, 1733. Therefore, we believe it can be safely concluded that Bishops who have the power to reduce the burdens of Masses... cannot diminish or reduce the number of Masses prescribed and accepted in a contract, even if the revenues assigned for that purpose have diminished; but, with this purpose in mind, the very nature of the act requires..."

[*Latin ed. p. 40*]

40. "It has been requested that the judges examine the matter, investigating whether such a reduction in revenues is permissible, so that, according to the rules of received law, it may suffice to rescind the contract, or at least to bring it into conformity with the norms of justice and equity." Therefore, from the doctrine recently expounded, it would seem that the power granted to reduce the obligations of legates, expressly stipulated, extends only to those legates which, after a careful examination, appear to be proportionally reducible according to the diminished revenues of the *fundi*. However, on the other hand, there are reasons suggesting that the reduction of masses should be made absolutely and indiscriminately, both in demonstrative and expressly stipulated legates. For, firstly, this does not concern a favor to be granted by the Bishop, but a favor already granted by the Supreme Pontiff. And rescripts granting favors are favorable. Furthermore, in the very words of the rescript, taking them in their genuine meaning, no distinction has been made between either type of legate; wherefore, since the law does not distinguish, neither should we, as the saying goes. In this matter, there is also a rule authentically promulgated concerning the execution of such concessions granted to Ordinaries. For

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this Holy Congregation has formulated an instruction to be communicated to the Bishops who are granted these powers. The tenor of the instruction is reported by Benedict XIV in *Op. De Syn. Dioec.*, book 13, chapter last, no. 32: "How, however (in the words of the instruction), it should be conducted in the execution, with regard to expressly or demonstratively stipulated legates, the Most Holy Congregation has ordered to be notified to you, that, after mature consideration and examination of all the provisions and foundations by which the aforementioned obligations of masses are attached (except for instruments or contracts upon which one should not place one's hand, unless in the case of a judicial instance for their rescission on the grounds of injury), those legates or foundations will be expressly stipulated, if the founders, having first begun the act of bequeathing or in some way disposing of the property, and subsequently added the obligation of masses, and in this case..."

[*Latin ed. p. 41*]

"Forty-one such obligations, in accordance with the nature of manual alms, as mentioned above, can be regulated; otherwise, if the founders begin with a prayer or other dispositions before the imposition of the obligation, and then subsequently assign a property, then the obligation is considered demonstratively established, and the heirs of the founders are obliged by your Eminence to provide perpetually for the maintenance of said obligation and to supplement any deficient sum, both for the past and for the future." In the same manner, the Sacred Congregation of Holy Orders judged in Milan on September 9, 1702; April 9, 1718; April 1, 1719; and in Venice on February 4, 1719, regarding legacies that are expressly and demonstratively established. From these pronouncements, it follows that the Sacred Congregation interprets the mind of the founder in the case of expressly established legacies, so that a certain portion of the income from a specific property is allocated for the celebration of Masses; therefore, as the alms for Masses increase, the number of such Masses must decrease. Consequently, it can be argued with even greater force that, from the concession made for reducing demonstratively established legacies, a concession can be made for reducing expressly established legacies, so that, when both types of legacies can be indiscriminately reduced, the execution of the decree shows greater favor in reducing expressly established legacies than demonstratively established legacies. Furthermore, this interpretation in the case of expressly established legacies is also very consistent with the economic reasons of the heirs or legatees. For the same reason by which the alms for Masses are increased, the same applies to the remaining income of the property burdened by the obligation. For these revenues, although their number may increase, do not necessarily increase in value, if account is taken of the higher price of goods to be acquired. Therefore, with due regard for proportion, the original will of the founder is not changed, even

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though the number of Masses decreases, and the income of the property increases. Moreover, the Church provides that, even with the reduction of the obligation for Masses, the spiritual benefit of the pious founder should not be diminished. For it supplements from the infinite treasure of the merits of Christ and all the Saints what is lacking due to the smaller number of Masses celebrated. This is expressly intended by the Sacred Congregation of Rites, as reported by Cardinal De Luca in Mel. Cur. Rom. diss. XX, where he notes that the Congregation of Rites may change or reduce..."

[*Latin ed. p. 42*]

42. The weighty matters of the pious legate were presented, so that his dispensation might, "in place of those works or suffrages which ought to be performed, be fulfilled from the ecclesiastical treasury, with full Apostolic authority." After deliberation on both sides, the following questions were proposed for consideration: I. Whether the number of Masses ought absolutely to be reduced in the case. II. And, to the contrary, whether it might be reduced proportionally, taking into account the increase in alms and revenues in the case. RESOLUTION. The Sacred Congregation, after discussion on February 4, 1894, decided to respond: "It is to be requested of the Most Holy [Father] that the decree be moderated, according to his intention." FROM THE SACRED CONGREGATION FOR RITES. Norms for Sacred Music. PART I. FIRST SECTION. General Norms for Music to be Used in Church Services. Certain general norms regarding music, which is commonly used in church services, must be observed. Musical composition: I. Every musical composition, whether of voices or instruments, which is informed by the spirit of the sacred function to which it is associated, and which responds religiously to the meaning of the rite and of the words, moves the faithful to devotion, and is therefore worthy of the House of God.

[*Latin ed. p. 43*]

From the Sacred Rituals, Book 4, Chapter 43, Paragraph 2. Thus is the Gregorian Chant, which the Church considers to be truly its own, and therefore it adopts only this in the liturgical books approved by it.

2. This kind of chant, the Gregorian chant, is considered by the Church as its own proper form, and for this reason, it adopts only this in the liturgical books approved by itself.

3. Furthermore, polyphonic chant, and chromatic chant, provided they are endowed with the aforementioned qualities, can also be suitable for the sacred functions.

3. Likewise, polyphonic chant, and chromatic chant, if they are endowed with the same qualities, can also be suitable for the sacred functions.

4. In the polyphonic genre, the music of Pierluigi da Palestrina, and his excellent imitators, is considered most fitting for the House of God; as, in

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the chromatic genre, the music that has been transmitted to us until this day by renowned Masters of various Italian and foreign schools, and especially by the Roman Masters, is considered suitable for divine worship; whose musical compositions have been repeatedly praised by the competent authority as truly sacred.

4. In the polyphonic genre, the music of Peter Aloysius of Palestrina, and of his most distinguished disciples, is considered most fitting for the House of God; as, in the chromatic genre, music is held to be suitable for divine worship, which has been transmitted to us until the present day by renowned Masters of various Italian and also foreign schools, especially by the Roman Masters; whose musical compositions have been repeatedly commended by the ecclesiastical authority as truly sacred.

5. Since it is well known that even an excellent composition of polyphonic music can become unsuitable due to poor execution; in such a case, the Gregorian Chant should be used in strictly liturgical functions.

5. Since it is very well known that, even if excellently composed, a polyphonic musical composition, if performed poorly, can dishonor the House of God; if this happens, the Gregorian chant should be used entirely in purely liturgical functions.

6. The figured music played by the organ should generally correspond to the uniform, harmonic, and solemn nature of this instrument. The instrumental accompaniment must properly support the chant, and not overwhelm it. In the preludes and interludes, both the organ and the instruments...

6. The musical performance, which is carried out with the organ present, should correspond to this uniform, harmonic, and solemn nature. The accompaniment of the instruments should properly support the chant, and not overwhelm it. In the preludes and interludes, both the organ and the instruments...

[*Latin ed. p. 44*]

44. The instruments used in the sacred rites must always preserve the character corresponding to the ecclesiastical function and the sentiment proper to the function.

7. The language to be used in the sacred chants during strictly liturgical functions must be the language proper to the rite; the texts, whether from the Holy Scriptures, the Liturgy, or approved hymns, must be taken from ecclesiastical sources.

8. In other functions, the vernacular language may be used, taking the words from devout and approved compositions.

9. It is forbidden in the Church to use music for singing, or that which is said to be musical, which has a profane character, especially if it is inspired by worldly themes, variations, and theatrical reminiscences.

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10. In order to ensure due respect for the liturgical words, and to avoid the prolixity of the sacred function, all singing is forbidden in which the words of the sacred liturgy are even in the slightest degree omitted, or taken out of context, or unduly repeated.

11. It is forbidden to divide into completely separate pieces those verses which are necessarily connected with each other.

12. It is forbidden to improvise or, as they say, to indulge in "fantasies" on the organ; everyone must take care to avoid the excessive prolixity of the sacred functions. It is forbidden to anyone to sing in such a way that he does not know how to do it properly, according to the rules of musical art; and it is also forbidden to sing in such a way that the same words are not repeated according to the rules of musical art.

[*Latin ed. p. 45*]

I. Since Sacred Music is a part of the Church's Liturgy, We earnestly exhort the Most Reverend Bishops of the Dioceses of Italy to take up its special care, and to issue appropriate regulations concerning it, especially on suitable occasions, and above all in Diocesan and Provincial Synods; but always in conformity with these laws. The participation of the laity is permitted; however, each Bishop of each Diocese must oversee and direct them. It is not permitted to form committees or hold congresses without the express consent of ecclesiastical authority; which, for each Diocese, is the Bishop; and for each Province, the Metropolitan with his Suffragans. Periodicals of Sacred Music cannot be published unless authorized by the proper Bishop. Furthermore, any discussion concerning the articles of these regulations is prohibited; in all other matters pertaining to Sacred Music, it is permitted, provided that the laws of Christian charity are observed: secondly, no one should appoint himself as the master or judge of others.

[*Latin ed. p. 46*]

46 EXs. c. RITUUM II. The Reverend Ordinaries will ensure that the Clergy diligently fulfill the obligation of studying plainchant, especially as found in books approved by the Holy See. Regarding other forms of music and the sound of the organ, they will not impose this obligation on the Clergy, lest they be distracted from the more serious studies to which they must dedicate themselves. However, if some of them have already been instructed in these areas, or show a particular aptitude for them, they may be permitted to perfect themselves in them. II. The Reverend Diocesan Bishops will diligently ensure that the Clergy fulfill the duty to which they are bound, namely, to learn Gregorian chant; this is especially found in books approved by the Holy See. As for other forms of music, and the sound of the organ, the Clergy should not be compelled to learn them, lest they be drawn away from the more serious studies to which they must attend. If, however, some have already been instructed in these areas, or

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show a particular inclination for them, they may be permitted to perfect themselves in them. III. The same Reverend Ordinaries will carefully oversee their Parishes and Rectors of Churches, so that they do not permit musical performances that are contrary to the norms of this Regulation; and they will also, according to their judgment and prudence, apply canonical penalties against those who disobey. IV. Furthermore, the same Reverend Bishops will diligently ensure that Parishes and Rectors of Churches do not permit musical concerts that are contrary to these laws, even if, as the case may require, they apply canonical penalties to the contumacious, according to their prudence and judgment. V. With the publication of this Regulation, and its communication to the Reverend Ordinaries of Italy, any previous act on the same subject is abrogated. VI. These prescriptions, having been duly promulgated, and having been legitimately notified to and presented to the Reverend Bishops of all Dioceses in Italy, any other previous prescription on this same matter, hitherto issued, shall be considered abrogated. His Holiness Pope Leo XIII, following a report made to him by the undersigned Cardinal Prefect of the Sacred Congregation, has issued these prescriptions and laws.

[*Latin ed. p. 47*]

From the Sacred Congregation of Rites, it has deigned to confirm and sanction the preceding Regulations in every part, ordering their publication, on the 6th of July, 1894. * S. Luigi Tripepi, Secretary. Approved, confirmed: on the 6th of July, 1894. G. Card. ALOISI-MASELLA, Prefect. L. 47. Most Reverend and Most Reverend Lord. Although the Regulations for Sacred Music, communicated with Pontifical authorization by the Sacred Congregation of Rites to the Italian Episcopate on September 24, 1884, contained many wise norms for this important part of the ecclesiastical liturgy; nevertheless, not a few, nor slight, difficulties opposed in the majority of Dioceses its exact observance. Although the Norms for the performance of Sacred Music have already been given and, with Pontifical authority, presented by this Sacred Congregation of Rites to the Bishops of Italy on September 24th, 1884, and contain many entirely appropriate prescriptions, pertaining especially to this most important part of the ecclesiastical Liturgy; nevertheless, in many Dioceses, not a few, nor slight, difficulties have arisen, preventing their full and complete implementation. To remove such obstacles, and to ensure that in each Church the music is worthy of the House of God, the Holy Father, after having consulted the principal Masters of the musical art, and having learned the opinion of many Ordinaries from various parts of Italy, decreed that the same Sacred Congregation, in a plenary session, should subject this serious matter to a

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mature examination.

[*Latin ed. p. 48*]

48. The Sacred Rites have indicated which of the prescribed rules should be clarified more fully, which should be modified, and which instructions should be added, in order to more easily achieve the desired outcome. It remains to be seen which of the prescribed rules should be explained more clearly, which should be reformed, and finally, what other documents should be added, so that what we so earnestly desire may be attained. The fruit of this carefully considered discussion is the new Regulation, which, after the formal approval of His Holiness, is sent here enclosed to Your Illustrious and Reverend Lordship. This treatise is divided into two parts; the first contains the general rules to be observed in the composition and performance of Church music; the second contains certain instructions suitable for promoting its study, and also for preventing those devoted to this art from exceeding the limits assigned to them, and for preventing the authority of the Church from being diminished in any way in all matters concerning divine worship. Furthermore, since in recent years the ancient discussions about plainchant have been revived, despite the many acts of the Holy See concerning it, His Holiness also wished that this topic should be treated anew, and that the questions that have arisen should be examined and resolved by the Sacred Congregation. Which, having kept before its eyes all that had been proposed for this purpose, judged that no departure should be made from the prescriptions already issued. This is evident from the Decree, which, also sanctioned by the Supreme Pontifical Authority, is likewise attached to the present Circular.

[*Latin ed. p. 49*]

From the Edict of Holy Councils 49, this is extracted, which itself is confirmed by the highest authority of the Pontiff, and is also included in these Encyclical Letters. Therefore, the Holy Congregation, with the words of the Most Reverend and Most Reverend Holy Father, urges you, Madame and Most Reverend Lord, to diligently strive, with the well-known zeal, to ensure the exact fulfillment of these dispositions, which, as is well known, serve to remove every occasion for unpleasant controversies, and to bring them into effect; which, by rendering the use of music corresponding to the sacred rite easier in all ecclesiastical functions, remove the cause of many sad controversies, and make the proper use thereof far easier, in all ecclesiastical functions, corresponding to the sacred rite. Having fulfilled the office incumbent upon him, the undersigned, with the best intentions and with perfect esteem, and with full observance, has presented himself to you, Madame and Most Reverend Lord. From the Secretariat of the Congregation of Rites, from the Holy Roman Curia, on the 21st of July, 1894.

Most devotedly, as a brother,

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G. Card. ALOISI-MASELLA, Prefect.
Luigi Acta, Tripepi, Vol. XXVII, page CCCXIII.
Aloisius Tripepi, Secretary.

[*Latin ed. p. 50*]

50 FROM THE SACRED CONSTITUTION concerning the preservation of uniformity in choral singing. As Saint Augustine and other Fathers have frequently taught concerning the beauty and utility of ecclesiastical singing, so that, through the delight of the ears, a weaker mind may be aroused to the affection of piety (1); the authority of the Roman Pontiffs has always attributed its complete and most excellent fulfillment to itself. Therefore, in this service of the Catholic Liturgy, Gregory, surnamed the Great, devoted such care and study, that even the very name of sacred chants was borrowed from him. Others, however, in the course of time, the Pontiffs, not being unaware of how much the dignity of divine worship claimed of this matter, following the footsteps of their immortal predecessor, diligently strove not only to restore the Gregorian chant to its accepted and most approved form, but also to bring it to a more suitable, better, and more exemplary arrangement. Especially, after the decrees and enactments of the Council of Trent, and the most carefully revised edition of the Roman Missal, which was completed by the command and authority of Pope Pius V, the wisdom of Gregory XIII, Paul V, and others shone forth more and more in promoting liturgical singing, who, in order to preserve the integrity of the Liturgy, sought nothing more and nothing older than that the uniformity of the sacred rites, and even of the sacred chants, should correspond everywhere. In this matter, the solicitude of the Apostolic See was greatly aided by the fact that the *Graduale*, accurately revised and reduced to simpler forms, was entrusted to John Peter Aloysius of Praeneste, to be elaborately and excellently adorned. For, as was fitting for a man devoted to his office, he diligently and learnedly fulfilled the mandate: and the most celebrated master was able to accomplish such a thing, so that, according to the wisest norms, and with the true characteristics preserved, the reform of the liturgical chants was lawfully accomplished. The work of such importance, undertaken by the illustrious Peter Aloysius of Praeneste, followed by his distinguished disciples, was undertaken by order of the Pontiffs to be printed by the Medici Press in Rome. However, the beginning of such experiments and endeavors was only permitted to be completed in this our age. For, in the year 1837, Pope Pius IX happily introduced the uniformity of liturgical singing (1) *Confessionale*, Book 1, Chapter 33, paragraph 3.

[*Latin ed. p. 51*]

From the Sacred Congregation of Rites, number 51, it was most earnestly desired that a special Commission of men, distinguished for their knowl-

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edge of Gregorian chant in Lodi, be established in the City; and that it be entrusted with the task, and supported by, the Sacred Congregation itself. This Commission then subjected the edition to examination, so that the Roman Gradual, previously printed by the Medici press and approved by the Apostolic Letters of Paul V, might be published anew. This edition, having been completed with the greatest benefit, and with equal diligence and with appropriate corrections, in accordance with the norms prescribed by the Commission, was repeatedly shown to be highly commendable, and it did not hesitate to declare it authentic in its Brief Letters, dated May 30, 1873, the wording of which is as follows: "We commend this very edition of the Roman Gradual to the Most Reverend local Ordinaries, and to all those who are concerned with sacred music, most earnestly; especially because it is most pleasing to Us that, as in other matters pertaining to the Sacred Liturgy, so also in music, the same uniformity be maintained in all places and dioceses, as is observed by the Church of Rome."

Our Predecessor's approval was confirmed and extended by the Most Holy Pope Leo XIII, who, in his Apostolic Letters, dated November 15, 1878, bestowed a special commendation upon a new edition of the first part of the Antiphonary, which includes the daily Hours, having been excellently, as was fitting for learned musicians, and intelligently revised by the same men appointed by the Sacred Congregation. He addressed the Bishops and all who cultivate sacred music with these wise words: "Therefore, we approve the aforementioned edition, which has been revised by men most skilled in ecclesiastical chant, appointed for this purpose by the Sacred Congregation of Rites, and we declare it authentic, and we commend it earnestly to the Most Reverend local Ordinaries and to all those who are concerned with sacred music, especially with the intention that the same uniformity be maintained in all places and dioceses, both in other matters pertaining to the Sacred Liturgy, and also in music, as is observed by the Church of Rome."

However, as after the Brief of Pope Pius IX concerning the Gradual, objections were raised and obstacles were removed in order to bring the approval of the edition into question, so that the Sacred Congregation, on April 14, 1877, considered it its duty to assert the authenticity of the edition and to fully confirm it with its support; and likewise, after the Apostolic Letters of Leo XIII, it remained entirely...

[*Latin ed. p. 52*]

52. From the Sacred Regulations, some have judged that certain counsels and decrees concerning the institution of ecclesiastical chant have been neglected, counsels and decrees that are confirmed by the constant reason and usage of the Roman Liturgy. Indeed, after the publication of the Church's choral books, and with this entire matter having been excellently brought to fruition, wider discussions arose; and, at the meeting of liturgi-

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cal chant held in Arezzo in the year 1882, stronger criticisms affected those who, regarding the uniformity of ecclesiastical chant, rightly and justly believe that only obedience to the Apostolic See is due. When those who had contended in Arezzo for this reason presented certain resolutions or proposals on the same matter, not only to the people, but also to our Most Holy Lord Leo XIII, formulated in writing, the Pontiff, moved by the gravity of the matter, in order that the unity and dignity of sacred chant might be preserved, assigned those resolutions or proposals for examination to a special group chosen by himself, consisting of certain Fathers Cardinals and those presiding over the Sacred Congregation for the Propagation of the Faith. After mature consideration of all matters, and with the judgments of most distinguished men, on April 10th of the year 1883, it was judged without any doubt: that the resolutions or proposals issued by the Arezzo assembly in the preceding year, and presented to the Apostolic See concerning the Gregorian chant for restoring it to its ancient tradition, cannot be accepted or approved as they are. For although it has always been, and will always be, for the benefit of instruction, free for those devoted to ecclesiastical chant to investigate what the ancient form of ecclesiastical chant was, and its various phases, as most learned men are accustomed to discuss and inquire about it in connection with the ancient rites of the Church and other parts of the Sacred Liturgy; nevertheless, only that form is to be considered as the authentic and legitimate Gregorian chant today, which, according to the Tridentine decrees of Paul V, Pius IX, and our Most Holy Lord Leo XIII, and by the Sacred Congregation for Rites, according to the recently revised edition, has been approved and confirmed, as it alone contains that manner of chanting which the Roman Church uses. Therefore, concerning this authenticity and legitimacy, there should be no doubt or further inquiry among those who sincerely obey the authority of the Apostolic See. However, in recent years, for various reasons, the former difficulties have been re-imposed, and indeed, new discussions have arisen.

[*Latin ed. p. 53*]

From the Sacred Congregation of Rites, number 53, it was determined that certain matters, which either undermined or entirely contradicted the authenticity of this edition, as well as the chants contained within it, had been brought to light. Furthermore, there were those who, driven by the desire that Pope Pius IX and Pope Leo XIII, the Supreme Pontiffs, had so strongly recommended the uniformity of ecclesiastical chants, wished to entirely prohibit other chants that had long been used in particular churches. To better clarify these doubts and to prevent all future ambiguities, His Holiness decided to refer the matter to the Ordinary Congregation of all the Cardinals of the Sacred Congregation for the Guardianship of the Rites, who, having been convened in meetings on June 7th and 12th, after carefully considering all matters pertaining to the

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issue and other relevant information presented, unanimously responded with the following judgment: The dispositions of the Most Holy Pope Pius IX in the Brief "Qui choricis" of May 30, 1873; of the Most Holy Lord Pope Leo XIII in the Brief "Sacrorum Concentuum" of November 15, 1878; and of the Sacred Congregation in the Decree of April 26, 1883, are to be maintained. Regarding the freedom with which particular churches may retain a legitimately introduced and still used chant, the same Sacred Congregation decreed that the aforementioned decree should be reiterated and emphasized, in which, in a meeting held on April 10, 1883, all local Ordinaries and other cultivators of ecclesiastical chants were strongly encouraged to adopt the aforementioned edition in the Sacred Liturgy, in order to maintain the uniformity of chants, although, according to the most prudent method of action of the Apostolic See, it did not impose this edition on individual churches. After all of these matters had been reported to His Holiness by the undersigned Prefect of the Sacred Congregation, the Most Holy Lord Pope Leo XIII approved the Decree of the Sacred Congregation, confirmed it, and ordered it to be made public on July 7, 1894.

CAIETANUS CARD. ALOISI - MASELLA

Prefect of the Sacred Congregation.

L. * S. ALOISIUS TRIPEPI

Secretary of the Sacred Congregation.

[*Latin ed. p. 54*]

54 FROM THE SACRED CONGREGATION'S DECREES REGARDING THE USE OF THE SLAVIC LANGUAGE. From the Sacred Congregation of Rites, dated 13 February 1893. Certain doubts concerning the use of the Old Slavic language in the sacred liturgy, having been recently presented to the Sacred Congregation of Rites for a suitable declaration, and since the aforementioned Sacred Congregation has long devoted its attention to this very important matter, in order that certain norms might be given to the Ordinaries in these places, and after a mature examination and attentive consideration of the prescriptions of the Holy See, especially the Apostolic Constitution *Pastoral! Munere* of the Supreme Pontiff Benedict XIV, dated 26 August 1754, it has decided to issue the following resolutions: I. In liturgical functions, the Slavic language, where legitimately in use, must be the Old Slavic, and not the modern or vulgar language. II. It is not permitted to read or sing the Mass using partly the Latin language and partly the Slavic language; but it is permitted, where the Slavic language is prevalent, that the Epistle and the Gospel, which are read in Latin, may also be recited in the Old Slavic language. III. Priests who have the right to

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celebrate Mass and to chant the Divine Office in the Slavic language, must not only use the liturgical Slavic language, but also, if they are attached to a Church where the Latin language is used, they must celebrate the solemn Mass in Latin and chant the Divine Office in Latin. The same applies to priests who celebrate Mass and chant the Divine Office in Latin, and who minister in a Church where the Slavic language has been legitimately introduced. Saint James of Chile. DECREE CONCERNING THE BLESSING TO BE GIVEN BEFORE THE SACRED HOMILY. Dated 13 July 1894. The Most Reverend Lord Marianus Casanova, Archbishop of Saint James of Chile, humbly requested a solution from the Sacred Congregation of Rites regarding the following doubt: On 1 July 1874, the Sacred Congregation of Rites declared that the custom prevailing in the Archdiocese of Saint James of Chile, whereby the blessing is requested by the secular or regular priest celebrating, from the one who is about to give the homily, may be observed.

[*Latin ed. p. 55*]

FROM THE SACRED CONGREGATION FOR RITES, 55, concerning the solemnities of the Mass. If the Bishop is present in the sanctuary, wearing the rochet and mozzetta, to whom does the blessing belong, to the celebrating priest or to the Bishop? And the Sacred Congregation itself, in response to the inquiry below from the undersigned Secretary, and after a careful deliberation with the Masters of the Ceremonies of the Apostolic See, considered that this doubt should be answered as follows: Negatively to the first part; affirmatively to the second. And thus it responded and ordered that it be observed on July 13, 1894.

[Signed:] CARDINAL ALOISIUS MASELLA, Prefect of the Sacred Congregation.

[Signed:] ALOISIUS, Secretary.

L. * S.

Regarding the Decree of Beatification and Canonization of the Servant of God, Louise de Mari Iac, widow Le Gras, foundress of the Society of Girls of Charity. The writings attributed to the aforementioned Servant of God, and which were presented to the Sacred Congregation for Rites after duly conducted investigations, so that a review and examination thereof might be instituted for the advancement of the decrees, are described in the following list: (followed by a list).

Regarding the inquiry presented by me, the undersigned Cardinal, Prefect of the Sacred Congregation for Rites, and which was signed and submitted to the Ordinary Sessions of the Sacred Congregation itself, concerning the review of these writings, the Most Reverend and Illustrious Fathers, Prefects of the Sacred Rites, after hearing the report of the aforementioned Prefect, and after mature deliberation, and after hearing the Reverend Father D. Augustine Caprara, Promoter of the Faith, considered that it should

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be answered: That nothing stands in the way of proceeding further, reserving, however, the faculty for the Promoter of the Faith to object, if and to the extent that it is legally permissible.

July 10, 1894.

Afterward, I, the undersigned Cardinal, submitted a report to the Most Holy Lord, Pope Leo XIII, concerning these matters, and His Holiness approved and confirmed the Decree of the aforementioned Sacred Congregation on July 23 of the same year.

[Signed:] CARDINAL ALOISIUS MASELLA, Prefect of the Sacred Congregation.

[Signed:] L. * S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation.

[*Latin ed. p. 56*]

56 FROM THE SACRED CONGREGATION FOR RITES. Decree concerning the canonization of the Blessed John Baptist de La Salle, founder of the Congregation of the Brothers of the Christian Schools. Whereas the Most Holy Pope Leo XIII had already, through a Decree of August 27, 1893, benignly ordained that, in the Assemblies of the Ordinary Congregation of the Sacred Rites, the validity of the processes instituted by Apostolic authority concerning the alleged miracles wrought by God through the intercession of the aforementioned Blessed John Baptist de La Salle, could be considered without the intervention and vote of the Consultors; therefore, at the request of Father Robustian, General Procurator of the Congregation of the Brothers of the Christian Schools, and Postulator for this cause, His Eminence and Most Reverend Lord Lucidus Maria Parocchi, Promoter of the Cause, in a special Assembly of the aforementioned Sacred Congregation, according to the particular dispositions of His Holiness, published on November 20, 1878, and signed on that day at the Vatican, proposed the following question: Whether it is established that the processes instituted by Apostolic authority in the Dioceses of Ruthenia, Pamiers, and Montreal, concerning the miracles which are said to have occurred after the veneration granted to the aforementioned Blessed one, are valid; whether the witnesses have been duly and properly examined, and whether the testimonies have been legitimately obtained, in the case and to the effect of which we are speaking? Furthermore, the same Sacred Congregation, after mature deliberation and after hearing the Reverend Father D. Augustine Caprara, Promoter of the Faith, declared: Affirmative, or It is established, and in accordance with the understanding. April 10, 1894. These matters having been reported by the same Promoter of the Faith to the Most Holy Pope Leo XIII, His Holiness accepted and confirmed the judgment of the Sacred Congregation itself on July 16 of the same year. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Rites. L. * S. ALOISIUS TRIPEPI, Secretary

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of the Sacred Congregation.

[*Latin ed. p. 57*]

57 FROM THE DECREE OF THE HOLY CONGREGATION FOR INDULGENCES, by which an indulgence is granted for performing Confession to gain the so-called Indulgence of Porziuncula, dated July 30th. July 14, 1894. Most Blessed Father, Father Raphael of Aureliaco, General Procurator of the Order of Friars Minor of St. Francis, and General Delegate, prostrate humbly at the feet of the Holy Father, explains the following: In many places throughout the world, in order to gain the so-called Indulgences of Porziuncula, due to the great gathering of the people, and also due to the lack of confessors, it happens that on August 2nd, and on the eve of this day, those who approach for the purpose of performing the Sacrament of Confession cannot receive absolution. Therefore, the humble petitioner earnestly requests the Holy Father that he would deign to grant a general Indulgence, by virtue of which, the Sacrament of Confession performed within seven days before the aforementioned day of August 2nd, will suffice for all to enjoy the so-called Indulgences of Porziuncula. And God, Our Lord, Pope Leo XIII, in an audience held on July 14, 1894, having heard the report presented by the undersigned Secretary of the Holy Congregation for Indulgences and Sacred Relics, and having carefully considered the Decrees issued by this same Holy Congregation on several occasions, by which it is permitted to perform both Confession alone, and Confession and Holy Communion, on the eve of the feast to which the Indulgence is attached, or on the day immediately preceding the day for which the Indulgence has been granted, for any reason, he graciously granted only this: that the Sacrament of Confession performed even on July 30th, that is, on the day immediately preceding the eve of the day on which the Indulgence of Porziuncula is granted, may henceforth be valid for all Christians to obtain the aforementioned Indulgence, provided that the general rule regarding the manner and time prescribed in the aforementioned grant of the Indulgence is observed in fulfilling other pious works. Contrary decrees notwithstanding. Given at Rome, from the Secretariat of the aforementioned Holy Congregation, on July 14, 1894. Ignatius Cardinal Persico, Prefect. Archbishop of Nigopolis, Legate Honoris. Alexander, Secretary.

[*Latin ed. p. 58*]

58 FROM THE SECRETARY'S OFFICE, a brief letter in the prescribed form, by which a day is instituted in Borussia for the celebration of solemn prayers. December 9, 1892. By this, the singular counsel of Divine Providence urges us to diligently and attentively fulfill those things which are conducive to the benefit of the Christian faithful. Indeed, Our Predecessors, the Roman Pontiffs, although they have never considered anything more important than the Christian people venerating the Lord's Sabbath, yet,

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having weighty reasons for it, they have not hesitated to prescribe certain feast days and their observance, not only for the spiritual benefit of the people, but also, opportunely and healthily, to meet their temporal needs, according to the circumstances of the times and places. With this in mind, Leo XIII, Our Predecessor, by Apostolic letters, in the same form, addressed to Ferdinand August, Archbishop of Coloniensis, on December 11, 1828, and to other Sacred Ministers of the then-existing Prussian Kingdom, namely, those of Treves, MÃ¼nster, and Paderborn, and of Posen, CheÅ□mno, Breslau, and Lidzbark WarmiÅ□ski, commanding them to establish, with Apostolic authority, the same order of feasts in their respective dioceses, which prevailed in the eastern provinces of the Prussian Kingdom, according to the Apostolic letters of Clement XIV and Pius VI, Our Predecessors. Furthermore, when Pius VI, Our Predecessor, by similar letters addressed to Anthony, Apostolic Vicar and Dean of Wratislaviensis, on April 19, 1788, approved the request of the Prussian King, he decreed that for the dioceses subject to the Prussian King, a certain number of days should be designated each year for solemn prayers to obtain abundant fruits from the fields, and that this day, namely, the Thursday of the third week after Easter, should henceforth be observed as a feast day. Consequently, Our Predecessor, the Archbishop of Coloniensis, and other prelates of the aforementioned dioceses, in arranging the feasts for the same Prussian Kingdom dioceses, have, among other things, taken Pius VI's decree as law, and the feast-

[*Latin ed. p. 59*]

FROM the Breviary of the Fifth Council, number 59, which the prelates of those dioceses, under the auspices of King Frederick William III of Prussia, promulgated in the year 1829, it is stated that the fourth day of the week following the third week after Easter is to be observed as a feast day for solemn prayers to obtain abundant produce from the fields. To this fourth day, which is henceforth to be solemnly celebrated in each diocese, a particular feast day has been added, namely: I. For the Archdiocese of Cologne, the feast of Saint Joseph; II. For the Diocese of Treves, the feast of the Holy Tunic and Lance of Our Lord Jesus Christ; III. For the Diocese of Muenster, the feast of Saint Ludger; IV. For the Diocese of Paderborn, the feast of Saint Liborius; V. For the Archdiocese of Gnesen and Posen, the feast of Saint Adalbert; VI. For the Diocese of Chełmno, also the feast of Saint Adalbert; VII. For the Diocese of Breslau, the feast of Saint Joseph; VIII. And finally, for the Diocese of Lidzbark Warmiński, the feast of Saint Adalbert. However, in the present circumstances, the Most Serene Emperor and King William II desires that the aforementioned day of prayer and penance, commonly called the "Buss-und Bettag," which has hitherto been celebrated on various days in different parts of the Kingdom, be celebrated henceforth on a single, uniform day throughout the Kingdom, namely, on the fourth day of the week in the penultimate week of the ecclesiastical year.

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Since we are most willing to comply with these desired arrangements, and in the dioceses mentioned above, from the fourth day of the week following the third week after Easter, we will, with Our authority, transfer the same feast day, either for obtaining abundant produce from the fields, or rather, for an act of thanksgiving for the fruits already received, to the fourth day of the week in the penultimate week of the ecclesiastical year; indeed, this change seems opportune to Us, and for this reason, We have deemed it necessary to decide on the following matters. Namely, in accordance with the wishes of the Most Serene Emperor and King William II, who shows a favorable disposition and wise concern for the welfare of those within His jurisdiction, and to whom we, as far as is in Our power, give Our assent, We, with Our Apostolic authority, and with full knowledge and mature deliberation, having considered all the circumstances of the matter with diligent study, together with Our Venerable Brothers, the Cardinals of the Holy Roman Church, who preside over the Supreme Sacred Congregation, hereby decree that the fourth day of the week following the third week after Easter, which has hitherto been celebrated as a feast day in the Archdiocese of Cologne and in the aforementioned dioceses of Treves, Muenster, Paderborn, Gnesen, Posen, Chełmno, Breslau, and Lidzbark Warmiński, shall henceforth be observed for secular affairs.

[*Latin ed. p. 60*]

60. Regarding the handling of secret briefs, we decree that the feasts previously transferred to the same day for each of the aforementioned dioceses be restored to their proper dates in their respective places. Furthermore, by the fullness of Our Apostolic authority, and by the force of the present document, we elevate the fourth day of the week in the penultimate week of the ecclesiastical year to a feast day for the aforementioned dioceses, obliging the faithful to devote themselves to sacred matters and to abstain from servile works on that day. Finally, we command that on this fourth day of the week in the penultimate week of the ecclesiastical year, the same solemn prayers be instituted that were previously performed on the fourth Thursday after Easter, and that for each of the aforementioned dioceses, the feast of the Presentation of the Blessed Virgin Mary Immaculate be transferred from its customary date, namely from the twenty-first day of November, to the aforementioned fourth day of the week in the penultimate week of the ecclesiastical year, likewise by Our Apostolic authority. Notwithstanding Our and the Apostolic Chancery's regulations concerning matters of law, and all other Constitutions and Apostolic ordinances, and any other contrary provisions whatsoever. We entrust these matters to your care, Venerable Brother, so that you may inform other aforementioned ecclesiastical superiors and others to whom it pertains, of Our will, and We impart to you and to the flock entrusted to you Our Apostolic blessing. Given at Rome, near Saint Peter, on the ninth day of December, in the

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fifteenth year of Our pontificate. SERAPHINUS CARD. VANNUTELLI. To the Venerable Brother Philip, Archbishop of Coloniensi. FROM THE VICARIATE OFFICES. Responses concerning the erection of associations of the Holy Family (1). Most Reverend Lord, Most Eminent Cardinal, President of the Archiconfraternity of the Holy Family, I, the undersigned, respond to the following questions: (1) See *Collectanea*, Vol. XXV, pages 8 and following, and 567.

[*Latin ed. p. 61*]

FROM THE OFFICES OF THE VICARIATE GENERAL

I. Is it required that, in each parish, a canonical erection be established by the Bishop, modeled after the aforementioned confraternities? Answer: No; this is accomplished through a diploma which the Most Reverend President will send.

II. Is a formal declaration, through a written diploma or other means, required from the Bishop or Moderator regarding the erection of the association in each parish? Answer: No; but the moderator should observe what is contained in the Rules (III, b).

III. Is it required, in order to obtain Indulgences, that each parish obtain a page of affiliation signed by the Cardinal President, as the Rules (II, a) seem to indicate, in the manner of the affiliation of the aforementioned confraternities? Answer: Affirmative, and with this intention. The intention is that, once the Bishop has received the diploma from the Most Reverend President, he himself will take care to have the remaining documents printed according to that model, and will deliver them to each family associated with the organization.

IV. Should the Feast of the Holy Family, the primary feast of the association, be celebrated on the Sunday within the Octave of Epiphany, even in those dioceses in which the solemnity of Epiphany is celebrated in the choir on that day? Answer: Affirmative; but the Bishop can choose another feast day according to his prudence.

Rome, from the Offices of the Vicariate General, on the 7th of April, 1892.

RAPHAEL

To the Most Reverend Lord Karst, CHIMENTI, Pro-Secretary of the Conference of Vicariate Generals of the Congregation of the Most Holy Family.

Doubts:

I. Is it sufficient for the parish priest to simply record the name of the father or head of the family in the records of the Association of the Holy Family, or must each member of the family be registered? Answer: No, to the first part; affirmative, to the second.

II. Can the parish priest delegate another priest to register families? An-

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swer: Nothing prevents the parish priest from using another priest as an assistant in the registration of families.

[*Latin ed. p. 62*]

62 FROM THE VICARIATE EDITIONS, Volume III. Does it suffice for families wishing to be enrolled among the members to communicate their desire to the parish priest by letter or through intermediaries, or is it absolutely necessary that the head of the family, or some member thereof, personally appear before the parish priest for this purpose? Answer: It is indeed fitting that the head of the family present himself personally before the parish priest. Other questions and resolutions. The Most Eminent Cardinal Parish Priest, President of the Pious Association of the Holy Family, through me, the undersigned, provides answers to certain other questions proposed to him. Regarding Question III, mentioned on the preceding page, namely: "Is it required, in order to obtain indulgences, that each parish obtain a page of enrollment signed by the Cardinal President, as the Regulations (II, a) seem to suggest, in the manner of the enrollment of properly constituted confraternities?" The answer is "affirmative and in accordance with the intention." The intention is that the Bishop, having received the diploma from the Most Eminent President, will take care to have the remaining pages printed according to that model, and will deliver them to each family associated with the organization. Now, the question is asked: Is this answer imperative or merely directive? Answer: Merely directive and in accordance with the intention. The intention is that neither the Bishops nor the parish priests should need such diplomas (which have been frequently requested), since the matter is clearly defined in the Brief. Therefore, the answer was merely directive, in order that the unity, which is increasingly recommended by the Supreme Pontiff, may be observed. II. Regarding Question 2 on the same preceding page, "Is it sufficient for the parish priest to merely record the name of the father or head of the family in the records of the Association of the Holy Family, or must each member of the family be enrolled?" The answer is: Negative for the first part, affirmative for the second. Now, the question is asked: What is to be understood by "each member of the family"? Answer: It is to be understood as the total number of members, and not for the names of each individual member. III. Whether, if the father of the family is negligent or unwilling, the mother can...

[*Latin ed. p. 63*]

FROM THE OFFICES OF THE VICARIATE, or to some of the principal members of a family, for example, a grandfather, can a family be enrolled in the Pious Association? Answer: Affirmative. I. Whether the children of a family, servants, or soldiers, can enroll themselves in the Pious Association separately from their own family? Answer: Negative, and with good

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reason. The reason is that they should be enrolled together; but those who are negligent or refuse [to be enrolled] can enroll themselves separately. V. Whether someone can validly enroll themselves in a different parish? Answer: Negative. Therefore, a pastor cannot validly enroll those who are not of his parish, and those who have been enrolled in this way must be re-enrolled in their own parish. VI. At least, can a pastor enroll his relatives up to the fourth degree of consanguinity, who reside elsewhere? Answer: Negative. VII. Could the Diocesan Director, independently of the pastors, enroll Diocesans indiscriminately? Answer: Negative, because, according to the Apostolic Brief, enrollment is entrusted only to the pastors. VIII. Is mere residence sufficient for a valid enrollment? Answer: Affirmative. IX. Can pastors or Diocesan Directors, in the Roman Ritual, add assigned formulas and prayers for the consecration and renewal of consecration? Answer: Negative, unless the Holy Congregation of Rites itself provides for it. X. In images or statues representing the Holy Family, can the Hearts of the Divine Infant, the Blessed Virgin, and Saint Joseph be depicted? Answer: It is permissible concerning the Heart of the Divine Infant and the Blessed Mother; concerning Saint Joseph, it is not permitted. Rome, from the Offices of the Vicariate, on December 12, 1893, RAPHAEL CHIMENTI, Pro-Secretary of the Congregation of the Holy Family.

[*Latin ed. p. 64*]

64 APPENDIX L EXHIBENSACTA SEDIS APOSTOLICAE; quae aut iamdiu exaratae sunt aut quaelibet tempore volatae fuerunt Ephemeridum Moderatorem.

Sacra Congregatio, Secretum Officii, 4 Iulii 1776. Vicarius Apostolicus Tunkinensis Orientalis. De altaris tempore persecutionis. Utrum liceat altaria et mensas tempore persecutionis ab ecclesiis auferre. Responsum: Affirmative, dummodo non adsit scandalum et contemptus religionis.

Sacra Congregatio Rituum, 22 Martii 1882. — De octava diei dedicationis ecclesiarum. Quoniam in Dioecesi (Vallispratensi) dies Dedicationis seu potius Benedictionis ecclesiarum variarum memoria excidit, quaeritur an octavam Sancti aut Sanctae, in cuius honorem benedictae fuerant, cum Credo liceat celebrare; et cum iuxta easdem ecclesias non resideant rectores, sed solummodo semel in mense eas visitent, ob angustiam loci, num in talibus circumstantiis a celebratione Dedicationis seu Benedictionis fideles vicini excusentur. Responsum: Detur.

Decretum in una Oppiden. diei 19 Augusti 1634, exclusa tamen Die Octava Sanctorum Titularium Ecclesiae.

"Oppiden. Dubiis per Episcopum Oppidensem transmissis, et ad relationem Emi Torres, Sacra Congregatio respondit: Ad 1. Consecrationem probari concludenter ex signis deductis, et signa probari per testes deponentes de visu. Ad 2. An per celebrationem Missae in ecclesia polluta, dicatur reconciliata, Sacra Congregatio respondit: Negative, et ideo debere

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reconciliari iuxta formam praescriptam in Pontificali. Ad dubium: An ecclesia reconciliata ab Episcopo non habente iurisdictionem in loco dicatur bene reconciliata vel non, respondit: Affirmative. Quo vero ad diem consecrationis, cum ignoretur dies certus ipsius consecrationis, Sacra Congregatio censuit Episcopum, constituere debere ex nunc certum diem qui deserviat quotannis pro Consecratione ecclesiae."

[*Latin ed. p. 65*]

65 APPENDIX I. Letter, encyclical, from the Sacred Congregation of the Holy Office, September 16, 1864 (to the Bishops of England). Concerning those who have given their names to the society instituted to promote Christian unity. It has been reported to the Apostolic See that certain Catholics, and even ecclesiastical men, have given their names to a society, established in London in the year 1857, which claims to be working for the promotion of Christian unity. Furthermore, numerous articles have been published in periodicals, which state that Catholics are being enrolled in this society, or which recommend the society itself, having been written by ecclesiastical men. And indeed, the nature of this society, and its aims, can be easily understood, not only from the articles in the periodical entitled *The Union Review*, but also from the very document in which members are invited and enrolled. For this society, having been formed and directed by Protestants, is animated by a spirit which it openly professes: namely, to claim the title of "Catholic" for the three Christian communions – the Roman Catholic, the Greek-Schismatic, and the Anglican – even though these are separated and divided from one another. Therefore, access to this society is open to all who reside in any place, whether Catholics, Greek-Schismatics, or Anglicans; but with the condition that no one is permitted to raise questions on the various points of doctrine in which they disagree, and that each person is free to follow the tenets of their own religious confession with a tranquil mind. Furthermore, all members are instructed to recite certain prayers, and priests to celebrate sacrifices, according to the society's intention; so that, as is presumed, the three aforementioned Christian communions, since they are all, as it were, already part of the Church, may finally be united into one body. The Sacred Congregation, to which this matter has been submitted for examination, having carefully considered the matter, has judged it necessary to take steps to instruct the faithful not to join this society, which is led by heretics, and which is associated with the same heretics and schismatics. The Eminences, the Cardinals who preside over the Holy Office, do not doubt that the Bishops of this region, through their outstanding charity and learning, are already employing every diligence to demonstrate the vices with which this society is tainted, and to avert the dangers which it presents. Nevertheless, they would seem to be failing in their duty if they did not more strongly arouse the pastoral zeal of these same Bishops in this matter, which is so grave;

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for this novelty appears, on the surface, to be very pious, and to be deeply concerned with the unity of the Christian society. The foundation upon which this kind of society rests is that it subverts and distorts the divine constitution of the Church. For it assumes that the true Church of Jesus Christ consists partly of Roman Catholic Acts, Vol. XXVII, pages C C C XIV. 5.

[*Latin ed. p. 66*]

66 APPENDIX I. [The] desire for unity, spread throughout the entire world, has been fostered, in part, by the Photian schism and the Anglican heresy, with which, just as with the Roman Church, there is one Lord, one faith, and one baptism. To remove the dissensions by which these three Christian communions are divided, causing great scandal and a loss of truth and charity, [he] urges prayers and sacrifices, so that the grace of unity may be obtained from God. Certainly, nothing is more fitting for a Catholic man than that schisms and divisions among Christians be uprooted from their very foundations, and that all Christians be concerned to preserve the unity of the spirit in the bond of peace (Ephesians 4). Therefore, the Catholic Church pours forth prayers to God, and exhorts the faithful to pray, that those who have strayed may be converted to the true faith, and that those who have separated themselves from the Holy Roman Church, outside of which there is no salvation, may be restored to the grace of the Church, along with all their errors; indeed, that all may attain to the knowledge of the truth, with God's help. But that faithful and ecclesiastical men, led by heretics, and, what is worse, with the intention of promoting the most impure and corrupt heresy, should pray for Christian unity, this cannot be tolerated in any way. The true Church of Jesus Christ, established and recognized by divine authority through the fourfold mark, as confessed in the creed, is such that each of these marks is so closely connected with the others that it cannot be separated from them; hence, that which is truly and properly called Catholic must necessarily shine forth with the prerogatives of unity, holiness, and apostolic succession. Therefore, the Catholic Church is one, conspicuous in its perfect unity throughout the world and among all nations, and this unity, indeed, has as its principle, root, and origin the unwavering foundation of the blessed Apostle Peter, the Prince of the Apostles, and the supreme authority and power of his successors in the Roman Chair. The Catholic Church is nothing other than that which is built upon one Peter, and rises as a united body, closely connected by the unity of faith and charity: as the blessed Cyprian sincerely professed in epistle 45, when he addressed Pope Cornelius in this manner: "That you and your communion, that is, the unity of the Catholic Church, may be approved and cherished with steadfast and tender affection." And Hormisdas, the Pope, also wished this to be affirmed by bishops excommunicating the Acacian schism, in a

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formula confirmed by the testimony of all of ancient Christianity, in which those who are separated from communion with the Catholic Church are said to be those who are not in agreement with the Apostolic See in all things. And it is so far from being the case that communions separated from the Roman See can rightly be called and considered Catholic, that rather, it is from this very separation and discord that it can be recognized what kind of societies and what kind of Christians do not hold true faith, nor the true doctrine of Christ; as has been most clearly demonstrated from the second century of the Church.

[*Latin ed. p. 67*]

APPENDIX I. 67. Saint Irenaeus, book 3, chapter 3, against the heretics, writes: "Therefore, let the faithful be most careful not to join themselves to these societies, with which the integrity of the faith cannot be preserved; and let them hear Saint Augustine teaching that neither truth nor piety can exist where Christian unity and the charity of the Holy Spirit are lacking." Furthermore, the faithful should most strongly avoid the London Society, because those conspiring within it both favor indifferentism and cause scandal. That society, or at least its founders and leaders, profess that Photianism and Anglicanism are two forms of the same true Christian religion, in which, just as in the Catholic Church, God is pleased to be worshipped; and that divisions among Christian communities of this kind should be encouraged, but not to the point of violating the faith, because one and the same faith remains in them. This, however, is the height of pestilent indifference in matters of religion, which in this very age spreads to the great detriment of souls. Therefore, it is necessary to demonstrate that Catholics adhering to this society offer an occasion of spiritual ruin to Catholics, both to them and to non-Catholics, especially since, from a vain expectation that the three aforementioned communities, remaining whole and persisting in their own beliefs, will come together into one, that society turns away from the conversion of non-Catholics and attempts to hinder it through publications it disseminates. Therefore, the greatest care must be taken that Catholics, either through a false appearance of piety or through a misguided opinion, are not attached to this society, or to similar ones, in any way, nor that they favor them, and that they are not drawn away from the perfect unity that consists in the wonderful gift of God's grace in the foundation of Peter, by the deceptive desire for a new Christian unity.

S. C. S. Office, June 1, 1866. Archbishop of Leopolis. Concerning the education of schismatic girls with Catholics. The Religious House of the Most Sacred Heart of Our Lord Jesus Christ, founded in Leopolis in the year 1844, has for fourteen years educated schismatic girls from Moldavia together with Catholics, not only in secular subjects but also in the Catholic religion, as the parents of these schismatic girls have explicitly requested and continue to request. The proportion between the number of Catholic

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and schismatic girls has not always been the same; but for the past five years, schismatic girls have constituted approximately one-third of all the students in that house. In addition to the Catholic institution, these schismatic girls have in common with the Catholics pious readings and spiritual exercises; and together with them, they attend the Sacrifice of the Mass.

[*Latin ed. p. 68*]

68 APPENDIX I. They are present daily; moreover, all pray together, but I arranged that the Catholic girls should pray in Polish, while the schismatic girls should pray in French. According to the request of the schismatic parents, other girls, under the supervision of a person worthy of faith, are taken to the schismatic church once or twice a year, so that they may receive the Sacraments according to their confession; but the others are forbidden from receiving them. This practice in the institute of the Sisters of the Most Sacred Heart was not indeed approved by the local Ordinaries, because the Religious never gave the Ordinariate an official report about it; but nevertheless, it came to the knowledge of the local Ordinaries privately, who tolerated it, etc. R. It is permissible to admit schismatic girls to the school which the Sisters of the Most Sacred Heart of Our Lord Jesus Christ, called "Leopoli," direct, provided that they demonstrate good character, are instructed according to what has been explained, and are not obliged to attend the Mass Sacrifice and other ecclesiastical functions, but rather this is left to their own discretion, with the condition that they never engage in discussions with the Catholic girls about matters pertaining to religion; nor may they enter the schismatic church to receive sacraments from schismatic ministers: and if, in any case, this cannot be prevented, the Sisters must remain passive; and likewise, it is forbidden for the girls to be visited by friends and relatives, except for parents and guardians, without the permission of the Ordinary; and all of these things must be clearly and explicitly explained to them, and the parents or guardians of these girls must agree to these conditions before the girls are admitted to the school. This should be written to the Most Reverend Archbishop of Lviv, with the instruction that he should ensure the execution of all of these things, and that the spiritual well-being of the girls should be taken care of as much as possible, even after they leave the school; and the Sisters should be instructed that if any of them request to be converted to the Catholic faith, the matter must be reported to the Archbishop, who will prudently provide for the case, and he must diligently take care that no danger of even the slightest perversion or indifference arises for the Catholic girls from the admission of the schismatic girls. Letter from the Eminent Secretary of the Sacred Congregation of the Holy Office, November 8, 1865 (to certain Anglican prelates). "That you, having been given this letter, sincerely profess with your heart and with words that are not feigned, that you only desire that, according to the words of Our Lord Jesus Christ, there may be one flock and one shepherd,

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this gives great joy to this Holy Congregation, and you, by the divine grace of the same Jesus Christ, will arrive at true unity. However, you must be careful not to deviate from the path while seeking this. Furthermore, this Holy Congregation is deeply saddened to see that you, believing that you belong to the true Church of Jesus Christ,..."

[*Latin ed. p. 69*]

APPENDIX I. 69. Those Christian groups, who claim to possess the heritage of the priesthood and the Catholic name, although divided and separated from the Apostolic See of Peter. There is nothing which more abhors the true notion of the Catholic Church. For the Catholic Church, as I have warned in my letters to the Bishops of England, is that which is built upon one Peter, into one connected body, and united by the bond of faith and charity (1). Indeed, I will demonstrate to you, if you wish to carefully examine and consider this matter with a calm mind, that this unity of faith and charity, or communion, is not only the most important and fundamental property of the true Church, but also the surest and always visible mark, by which the Church itself is safely and easily distinguished from all sects, through the clear testimonies of the Holy Scriptures, and the signs of metaphors, parables, and images, by which the Church is delineated and, as it were, represented; through the most illustrious documents of the holy Fathers and the ancient Synods; and through the constant practice which the Church has followed from its very beginnings against all kinds of heretics and schismatics, even though many of them arrogated to themselves the heritage of the priesthood and the Catholic name. Just as the Catholic Church is and is called Catholic because of that very unity of faith and communion, which it maintains throughout all nations and at all times; so also it is called holy and apostolic because of that same unity; and just as, without such unity, it would cease to be Catholic, both in fact and in law, so also it would be continually deprived of the signs of sanctity and apostolic succession. But the Church of Christ has never lost its unity, nor has it ever lost it, not even for the briefest of times; for it is destined to endure forever, according to divine prophecies. How, then, can the Church be believed to endure forever, if, as happens in the changeable nature of worldly things, age after age were to introduce a new appearance and form, and if the Church itself were ever to depart from that unity of faith and communion, upon which it was founded by Jesus Christ, and then spread by the Apostles? Therefore, as St. Ambrose says, "The kingdom of the Church will remain forever, because it is a body of one faith" (2). And since the Church of Christ is absolutely and entirely unfailing, it necessarily follows that it must also be said and believed to be infallible in the transmission of the evangelical doctrine; which prerogative of infallibility was bestowed upon Christ the Lord, the head, spouse, and cornerstone of His Church, by a most wonderful gift, a dogma of unwavering Catholic faith.

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(1) St. Ambrose, *de officio ministrorum*, Book III, chapter 3, number 19.

(2) *In Lucem*, Book VII, number 91.

[*Latin ed. p. 70*]

70 APPENDIX I. And indeed, who can seriously believe that error can be present in the public and solemn teaching of the Church, which Christ established with this very purpose, so that we would no longer be infants, tossed about and carried away by every wind of doctrine, in the deceit of men, in craftiness to the circumvention of error (1), which He promised never to abandon, and to teach from which all truth would proceed; from which He willed that all nations be called to obedience of faith, and that the doctrine of things to be believed and practiced be received in such a way that he who did not believe those who preach, the true Apostles and their legitimate successors, would be condemned; to whom He attributed the office and authority of prescribing the form of sound words, in which all who are to be instructed in the things of God would be gathered? From this, Paul calls the Church the pillar and foundation of truth (2). But how could the Church be the foundation of truth, unless truth were securely derived from it? The Most Holy Fathers also speak with one voice and proclaim that in the unity of the Church, the unity of faith and the doctrine of Christ are so firmly established that they cannot be separated from one another; to which reference is made by that saying of St. Cyprian, that the Church is the dwelling place of unity and truth (3). The Catholic Church has never doubted this prerogative promised to it and communicated through the constant presence of Christ and the inspiration of the Holy Spirit, whenever it has sought to resolve controversies arising from faith, to interpret the meaning of the sacred Scriptures, and to refute errors contrary to the deposit of revelation; for it has always issued and proposed its dogmatic definitions as a certain and immutable rule of faith: which, as rules of faith, each one ought to assent to with the most intimate agreement, without any doubt, suspicion, or hesitation; but those who stubbornly resist these same definitions, by that very act are considered to have shipwrecked themselves concerning the necessary faith for salvation, and are no longer considered to belong to the flock of Christ. And these things more and more reveal the absurdity of that commentary on the Catholic Church arising from three communions, whose proponents are forced to acknowledge that the infallibility of the Church would necessarily be compromised. It is now equally certain and established that, so that the communion of faith and the unity of the Church might be generated and perpetually preserved, and so that the opportunity for schism might be removed (4), the most blessed Peter, above all the Apostles, was chosen by singular providence, as their prince, and as the conspicuous center and bond of that very unity; upon whom the Church was built, and to whom the entire flock (1) Ephesians I,

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14-. (2) 1 Timothy III, 15. (3) Epistle VIII, to the Council, apud Constant., n. 1. (4) St. Jerome, Book I, against Jovinian, n. 26.

[*Latin ed. p. 71*]

APPENDIX I. 71. To nourish, to confirm the brethren, and to bind and loose throughout the whole world, He conferred the highest care and authority upon the successors, to be transmitted to all ages. This is the Catholic dogma, received from the mouth of Christ, and transmitted and defended by the perennial preaching of the Fathers, which the entire Church has most sacredly preserved in every age, and has more than once confirmed by the decrees of the Supreme Pontiffs and Councils, against the errors of the innovators. Therefore, only that which has always been believed by the Catholic Church is true, namely, that which adheres to the faith and communion with the See of Rome, the successors of Peter, which, for this reason, Saint Cyprian calls the root and mother of the Catholic Church (1); which one, the Fathers and Councils designate by the appellation *par excellence* of the Apostolic See, from which the priestly unity arises (2) and from which all the rights of the venerable communion flow (3); in which Peter constantly lives and presides, and provides for those who seek the truth of faith (4). Certainly, Saint Augustine, in order to bring back the Donatists, convicted of schism, to the root and vine from which they had departed, used the argument frequently employed by the older Fathers: "Come, brothers, if you wish to be grafted in. It is a sorrow to us when we see you lying so far away. Number the priests, either from the very See of Peter, and in that order, see who succeeded whom. He is the rock upon which the gates of hell shall not prevail" (5). This alone sufficiently shows that in the Catholic Church, there is no one who is not attached to that rock, upon which the foundation of Catholic unity is laid. Saint Jerome felt no differently, for he considered profane whoever did not find consolation in communion with the Chair of Peter and the Pontiff sitting in that chair: "No one is a leader (thus he writes to Damasus) unless he follows Christ, and is associated with your Beatitude, that is, in communion with the Chair of Peter; I know that the Church is built upon that rock. Whoever eats the lamb outside this house is profane. If anyone is not in Noah's ark, he will perish when the flood comes. Whoever does not gather wheat scatters it; that is, whoever is not of Christ is of Antichrist" (6). Nor did Saint Optatus of Mileve feel differently, celebrating that singular chair, well known to all, established in Rome, in which unity must be so carefully preserved by all, that he who places another chair against that singular chair is a schismatic and heretic (7).

(1) Ep. IV. ad Cornelium, ap. Coustant, n. 3.

(2) S. Cyprian, epist. XI, ad Cornelium, ap. Coustant, n. 14.

(3) Epist. Concilii Aquileiensis ad Gratianum Imp., a.D. 381, inter epistolas S. Ambrosii.

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(4) S. Petrus Chrysologus, epist. ad Eutych., Act. III, Concilii Ephes., ap. Harduin, I, 1478.

(5) Psalm, in part. Donati.

(6) Epist. 14, al. B7, ad Damas., n. 2.

(7) De schism. Donatisi, lib. II, n. 2.

[*Latin ed. p. 72*]

72 APPENDIX I. And indeed, deservedly so; for in the ordination and succession of the Roman Pontiffs, as Saint Irenaeus openly declared to all, that which has been transmitted from the Apostles to the Church, and the proclamation of truth, has reached us; and this is the fullest demonstration that the same vivifying faith which has been preserved and transmitted in truth within the Church from the Apostles until now, is indeed one and the same (1). Therefore, if it is the proper and perpetual characteristic of the true Church of Christ that it be contained in the fullest unity of faith and social charity, that it flourish and be manifest to all men at all times, as a city set upon a hill; and if, on the other hand, Christ willed that the Apostolic See of Peter should be the origin, center, and bond of this same unity, it follows that any assembly which is entirely separated from the external communion and obedience of the Roman Pontiff cannot be the Church of Christ, nor can it belong in any way to the Church of Christ, that is, to that Church which is presented as to be believed in the Creed, after the commendation of the Trinity: the holy Church, the one Church, the true Church, the Catholic Church (2); which is called Catholic not only by its own members, but also by all its enemies (3), and thus the very name "Catholic" has been obtained solely so that, when all heretics wish to call themselves Catholics, if a certain pilgrim should ask where the Catholic Church is to be found, no heretic would dare to point to his own basilica or his own house (4); through which Christ bestows the benefits of redemption, as if through a body most intimately united to Himself, and whoever is separated from it, however laudably he may think he lives, will not have life, but the wrath of God remains upon him (5): therefore, such assemblies can in no way be rightfully called Catholic, nor can the name be attributed to them without manifest heresy. From this, you will understand, most honorable and beloved Lords, why this Holy Congregation takes such care to prevent the faithful from being associated with a society recently established by you, which, as you say, aims to promote Christian unity. You will also understand that any effort to reconcile concord will necessarily be in vain, unless it is based on those principles by which the Church was established by Christ from the beginning, and which, subsequently, the Apostles and their successors have propagated throughout the entire world, in one and the same way; which are found in the most celebrated Hor-

(1) *Lib. III. contra haereses, cap. 3, n. 3, ex vet. interpr.*

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(2) *S. Aug. de Symb. ad catechen., cap. VI.*

(3) *S. Aug. de vera Relig., cap. VII.*

(4) *S. Aug. contr. epist. fundam., cap. XIV, n. 5.*

(5) *S. Aug. ep. 141, al. 152, n. 5.*

[*Latin ed. p. 73*]

APPENDIX I. 73 errors in the formula, which it is certain that the entire Catholic Church has approved, are clearly explained. You will finally see that that so-called "oecumenical" [formula], which you mention, was valid during the communion before the Photian schism, because the Eastern churches had not yet departed from the due obedience to the Apostolic See; and that it is not sufficient to restore this most desirable communion merely to lay aside animosities and hatreds towards the Roman Church, but rather, according to the command and institution of Christ, it is necessary to embrace the faith and communion of the Roman Church; for, as the venerable Bede, the most splendid ornament of your nation, says: "Whoever separates themselves in any way from the unity of faith or from the society of that [Apostle Peter], such are not absolved from the bonds of sin, nor can they enter the gate of the heavenly kingdom" (1). And may it be so, honorable and most beloved Lords, that since the Catholic Church has been shown to be one, and not to be divided or split (2), you may no longer doubt, but rather embrace the bosom of that same Church, which, until the lamentable separation of the sixteenth century, has obtained the authority of Cattolica through the succession of bishops from the Apostolic See, while heretics surround it (3). May the Holy Spirit, who has begun in you through unspoken kindness towards this Church, deign to complete and perfect it without delay. Together with this Holy Congregation, our most holy Lord Pope Pius X earnestly implores the Father of mercy and light, that you may finally, fleeing from the inherited error, merit to be received into the inheritance of Christ, into the true Catholic Church, to which your ancestors certainly belonged before the regrettable separation of the sixteenth century, and to take root in charity in the bond of peace and in the society of unity (4).

(1) *Hora.* on the feast of the blessed Apostles Peter and Paul.

(2) St. Cyprian, *ep.* VIII, ad Corn., apud Coustant, *aum.* 2.

(3) St. Augustine, *de util, credendi*, chap. XVII, n. 35.

(4) St. Augustine, *ep.* 61, al. 223, n. 2; *ep.* 69, al. 238, num. 1.

[*Latin ed. p. 74*]

74. Letters from His Holiness Pope Leo XIII to John Baptist Ayroles, of the Society of Jesus; in which praise and encouragement are imparted to him for the work undertaken to illuminate the memory of Joan of Arc. Beloved Son, health and the apostolic blessing. — The extensive and diligent work

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you undertook some time ago, to illuminate the memory of Joan of Arc, the venerable virgin, has already met with the approval of learned men, and demonstrates a wealth of knowledge and the prudence of judgment. Although, as you constantly strive, nothing should be a hindrance to your work, nor should praise be necessary, nevertheless, for the very importance of the matter, we freely offer both. For this is a great honor to your country, and it is an honor also to the Catholic religion; of which, especially through its counsel and guidance, France has produced in every age true ornaments of great glory. Therefore, may your work proceed in such a way that, as you especially desire, this entire cause may emerge, not merely unharmed, but strengthened and enhanced, from the attacks of the enemies of religion. There are, above all, those who, stripping the deeds of this courageous and most pious virgin of all divine inspiration, attribute them solely to human ability; or who, fearing not the Church, dare to condemn her unjust condemnation, indeed imposed by men most hostile to this Apostolic See. It is of great importance to refute these and similar arguments with wisdom and faith, and this is the best way to benefit both religion and the state. In this, beloved Son, may you never cease to be diligent; especially now that the course of this very same cause has begun properly and legitimately, according to our forthcoming decree. In the meantime, may divine goodness assist you in all your other endeavors and in all your counsel. This, we earnestly desire, through the gift of the apostolic blessing. Given at Rome, near St. Peter's, on the twenty-fifth day of July, in the year 1894, in the seventeenth year of Our Pontificate. LEO XIII, POPE.

[*Latin ed. p. 75*]

75. A brief document granting permission to proceed safely towards the solemn beatification of the Venerable Servant of God, John of Avila. The Church of God has never lacked apostolic workers, whom the Evangelical Lord providentially sends to cultivate His vineyard, and the Redeemer gave this salutary precept to His disciples: "Going therefore, teach ye all nations," and throughout all ages, this has remained so vibrant within the Church that the most zealous ministers of Christ have never been lacking, those who would proclaim the divine wisdom widely to the people. Among these outstanding heralds of heavenly truth, distinguished for their wisdom and sanctity, the Venerable Servant of God, John of Avila, a secular priest, must be duly commended, who flourished in the most noble Spanish land, amidst so many holy men, in the sixteenth century, and to whom the title "Magister" was attached because of his singular skill in teaching. He was born in the town of "Almodovar," in the Priory of Cluny, on the sixth day of January, in the year 1500, to honorable parents, Alphonso of Avila and Catherine Chicona. From his childhood, he displayed a remarkable disposition for virtue; his zeal for piety, the innocence of his life, his modesty, and his true reverence served as an example to his peers.

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He diligently pursued studies in the humanities and literature, and this young man, endowed with a keen intellect, made such rapid progress in these liberal arts that, at the age of fourteen, he entered the University of Salamanca. But there, while diligently applying himself to the study of law, he was touched by the hidden grace of God, and, as if drawn by a friendly voice calling him to a higher purpose, he immediately turned away from all that concerned earthly matters, abandoned his university studies, and returned to his father's home, where, led by a love of penance and solitude, he began to live a hidden life with Christ in the Lord. Seeking the particular love of that Divine Lamb, who feeds among the lilies, he restrained his innocent body through fasts, vigils, and flagellations, and nourished the simplicity of his soul and the purity of his manners through all exercises of piety. Three years had passed since the Venerable Servant of God, John, had adopted this rigorous way of life, when, moved by the exhortations of a certain pious father of the Order of St. Francis of Assisi, he turned his mind to the study of philosophy and sacred theology.

[*Latin ed. p. 76*]

76 He added a brief account, and, having resolved to enter the priesthood, he proceeded so diligently in those arduous studies that his predecessors, with keen intellect, steadfast memory, and tireless diligence, foretold that he would become the wisest man in all of Hispaniae. Having completed his studies, and ordained a priest, he devoted himself entirely to the perfection of all virtues, and, burning with a desire for the apostolic ministry, he planned expeditions to the Indies. Therefore, he sold his patrimony, gave alms to the poor, and offered himself as a companion to the first Bishop of Tlascala, who was setting out on a sea voyage to Mexico. But while Alphonsus Manrique was waiting in Hispali for the opportune time to set sail, Alphonsus Manrique, the Archbishop of that city, and the Supreme Moderator of the Sacred Inquisition of Hispaniae, deeply grieved that this man of exceptional piety and learning was abandoning his native land, summoned the Venerable Servant of God to him, and, despite his reluctance, ordered him to remain in Hispaniae. Hearing this, and yielding to the wishes of the Bishop himself, who, considering the spiritual welfare of the flock entrusted to him, called him to apostolic labors in his own country, he began to labor most diligently in that province, where, for fifty years, he steadfastly endured the hardships of a life devoted to the ministry, leading the souls of many. And indeed, he traversed Hispali, Corduba, Granata, Astigi, Biatia, Montilia, and other cities of Vandalitiae with sacred sermons; the people, eager to hear him, flocked to him in large numbers, and he drew them to the study of divine things with eloquent speech and the example of his sanctity; wherever he went, the praise of Christian morals was revived. It was a sight to behold the crowds hanging on his words, as the sacred orator, with a face and eyes that shone with wonder, rebuked

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vices with harsh words, and sometimes shed tears, and sometimes pierced the hearts of his listeners with salutary fear. Nor were the fruits of his labors lacking. Many injustices were remedied; factions were extinguished; peace was often restored within domestic walls; vices that were often deeply ingrained were uprooted; integrity of morals, or piety, was instilled, and a desire for the eternal salvation of souls was awakened; and so many and such benefits flowed from the sacred expeditions of John to those regions, that the Venerable Servant of God was rightly and deservedly called the Master of Avila, and the Apostle of Vandalitiae. And not only did he take care that Catholic affairs should proceed well, prosperously, and happily through pious sermons delivered from the pulpit, but also through works and writings published in print, so that...

[*Latin ed. p. 77*]

In order to guide the faithful souls on the path to spiritual perfection, he consulted with them. Therefore, he was accustomed to visiting the sick; to remain with those nearing death, comforting their souls; to assist families in need, even those who did not request help; to console the afflicted; and, through counsel and action, to assist his neighbors daily. To those burdened by conscience, he offered a listening ear in a place dedicated to penance; and, whether by illuminating the Sacred Scriptures with learned commentaries from the pulpit, or by imparting the Catechism to children and common folk in simple language, he instructed. And the sanctity and wisdom of his writings are a testament to his virtue. While so diligently devoted to the salvation of others, he neglected nothing in order to attain the perfection and the virtues which he embraced, rightly judging that he ought to abound in all those praises which he inspired in others, and that his words would be more effective if confirmed by example. Therefore, he acquired such a reputation that the Roman Pontiffs, our predecessors, entrusted him with the most important tasks, and that eminent saints, whom the Church venerates as already enrolled in the heavenly ranks, wished to be guided by his counsel, and called him "Master." The Venerable Servant of God, John of Avila, first led Saint John of God, who had been accustomed to a respectable way of life, to the path of perfection and sanctity, through word and example; he was familiar with Saint Ignatius of Loyola, and he constantly fostered the Society of Jesus, which was flourishing in Spain; he encouraged Saint Francis Borgia to renounce the allurements of the world and leave the court of the emperor; and finally, he enlightened Saint Peter of Alcantara and Saint Teresa of Jesus with wise counsel and admonitions. But while this man, so splendidly adorned, was admired throughout Spain as an oracle of divine will, the Venerable Servant of God, John of Avila, aged seventy, weakened by apostolic labors and a long illness, fell asleep in the Lord on May 10th, in Montilla, in the year 1569, with a peaceful death, his last words being the sweet names of Jesus and Mary. However,

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with the death of the Venerable Servant of God, his memory did not perish; while his body rests in the tomb, the knowledge of his virtues has reached even future generations. And so, the fame of sanctity which he enjoyed in life became even greater after his death, and has been confirmed day by day by countless miracles which demonstrated the pleasing and accepted patronage of the saintly man. Therefore, concerning the same Venerable Servant of God...

[*Latin ed. p. 78*]

78. A petition for the Beatification and Canonization of this Servant of God was brought before the Congregation of Sacred Rites. After all the acts had been presented which the Apostolic Constitutions require in such cases, Pope Clement XIII, of blessed memory, by a Decree dated the sixth day before the Ides of February in the year 1759, testified that the virtues with which the Venerable Servant of God had lived had reached the heroic degree. Subsequently, in the same Congregation of Sacred Rites, an investigation was instituted concerning the miracles which were said to have been wrought by the Venerable Servant of God, John of Avila, at his intercession, and after all matters had been most carefully considered, three true and proven miracles were declared to have occurred; and We, by a Decree dated the day before the Ides of November of the preceding year, declared the truth of these miracles. It remained only that Our Most Reverend Brothers, the Cardinals of the Congregation for Sacred Rites, should be consulted, whether, with the heroic virtues and the miracles having been approved, as stated above, it could be safely proceeded with to grant the honors of the Blessed to the same Servant of God; and these, in a general meeting held before Us on the fourth day before the Kalends of December of the same year, unanimously responded that it could be safely done. Nevertheless, in so important a matter, We hesitated to open Our mind, until, with fervent prayers, We sought assistance from the light of the Father. Having done this with all diligence, We finally, on the First Sunday of Lent of this present year, pronounced a solemn decree that it could be safely proceeded with to the Beatification of the Venerable Servant of God, John of Avila, called Master. Since these things are so, We, heeding the wishes of the Sacred Prelates of Spain, by Our Apostolic authority, grant through these letters the faculty that the Venerable Servant of God, John of Avila, a secular priest, called Master, shall henceforth be called Blessed, and that his relics, although not to be publicly presented for the veneration of the faithful in solemn supplications, may be exposed, and that images of him may be venerated. Furthermore, by the same authority, We grant that an Office and a Mass may be recited for him, for the common benefit of confessors, not of pontiffs, with proper prayers approved by Us, according to the rubrics of the Roman Missal and Breviary. We furthermore command that the recitation of this Office, and the celebration of the Mass, be performed only

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within the dioceses of Toledo and Cordoba, and within the Priory of Cluny, by all the Christian faithful who are bound to recite the canonical hours, and that, with respect to the Masses, —

[*Latin ed. p. 79*]

BRIEF 79 is addressed to all priests, both secular and regular, concerning the churches in which the aforementioned gatherings take place. Finally, We grant that the solemnities of the Beatification of the Venerable Servant of God, John of Avila, aforementioned, may be celebrated in the temples with the Office and Masses of the Double Major rite; which We command to be carried out on the day determined by the Ordinary, within the first year after the same solemnities have been celebrated in the Basilica of the Vatican. Notwithstanding the Apostolic Constitutions and Ordinances, and the decrees concerning non-cult, and all other contrary things whatsoever. We wish that copies of these letters, even printed ones, provided they are signed by the hand of the Secretary of the Congregation of Sacred Rites, and are provided with the seal of the Prefect, may have the same full faith in discussions, even judicial ones, as would be given to the signification of Our will contained in these letters. Given in Rome, at St. Peter's, under the Fisherman's ring, on the 6th of April, 1894. In the Seventeenth year of Our Pontificate. M. CARD. RAMPOLLA FROM THE SACRED CONGREGATION CONCILI SANCTI GALLI (in Switzerland), OF MARRIAGE. On the 14th of April, 1894. Session 24, chapter 1, Concerning the reform of marriage. SUMMARY OF THE FACTS. On the 16th of May of the year 18ST, in the parish church of the town of Flums, in the diocese of Saint Gallen in Switzerland, the just marriage was to take place between Anthony Kurath, a farmer, over twenty-nine years of age, and Dorothy Hobi, who was twenty-two years of age. But Dorothy, as she herself and some others assert, did not consent to this marriage of her own free will, but yielded to the will of her parents, especially her father, who even threatened paternal disinheritance.

[*Latin ed. p. 80*]

80. SAINT GALLEN (in Switzerland). In these circumstances, the spouses lived together in Anthony's house for four weeks; they occupied the same room four or five times, but the wife affirms that they never used the same bed, and the husband confirms this, adding that their hearts were never lacking in love, kindness, and mutual affection. Indeed, they narrate and affirm under oath that they never exercised their marital rights. And the woman adds that this was her doing, because, in order to protect her reputation, rumors had spread before the marriage was celebrated that Dorothy was already pregnant by another man, and Anthony had learned of this. With a firm resolve to abstain from intercourse for a time, she says, she proposed this to her husband, who agreed, and she steadfastly

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adhered to this decision. The husband, she says, knew nothing of this bad reputation and this agreement, and if he had known, he would not have married Dorothy. After about three months, during which the husband was often away from the town, the wife was staying with her parents. Dorothy, bearing ill will towards Anthony for his harsh words to her sisters, said goodbye to her husband and left, never returning to him. Subsequently, the woman, having learned that she would more easily obtain the dissolution of this unhappy marriage from the Roman Pontiff, after a civil divorce decree, she requested this from the secular courts; and although the husband resisted this judicial petition and denied the truth of the reasons presented by the woman, she obtained it on July 22, 1889; and then she fled to Rome, requesting that the sacramental marriage be declared either null or, at the very least, that a dispensation be granted for it as a marriage that was valid but not consummated. Meanwhile, Anthony, since all hope of reconciliation had vanished, and it seemed that he was entering into new nuptials with the widow of his brother, from whom he had already conceived an illegitimate son, changed his mind and, through his parish priest, also requested the dissolution of the marriage.

SYNOPTIC DISCUSSION. THEOLOGIAN'S OPINION. Everyone knows that among the things that prevent the contracting of marriage, or that dissolve a marriage already contracted, weight and fear must be considered.

[*Latin ed. p. 81*]

SAINT GALLEN (in Helvetia), 81. Alexander III, cap. 14, *De sponsalibus*, and it is confirmed, with other rights omitted, from cap. 15 and 28 of the same title. Truly, such a marriage has neither validity nor effect, but only that which either destroys the very consent or deprives the necessary consent of its freedom; but this, indeed, is accomplished only by fear, which weighs heavily upon a man, or, when it concerns the weaker sex, upon a woman. Sánchez, *De Matrimonio*, lib. IV, disp. 3, no. 3, states that a marriage is valid when it is brought about by a cause which is evil, either present or future, which a man could not easily endure, and he simultaneously believes that this very thing is truly threatening him, for example, if he fears death, bodily torments, the loss of almost all his possessions, the frustration of his paternal inheritance, etc. — He who is actually compelled by such fear is certainly not to be considered as having validly entered into marriage. But it is not presumed that a marriage has been validly contracted, but rather it must be legally proven by the one alleging it; for, as is stated, "in foro externo, marriage is presumed to be valid, since external consent has been given, which is known to the Church." *De Iustis de dispens. Matrim.*, I, 2, cap. 12, no. 90. Indeed, it must be proven that the fear "arises from the testimony of witnesses; the witnesses, stating about the fear, together with the existing suspicion, must attest to the threats, blows,

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or similar indications of fear. For the witnesses must give an account of what they have said, according to C. Whose cause is joined with the Glossa, vers. de causis. Otherwise, if they simply testify about fear without alleging any external acts or indications that induced fear, such witnesses would be testifying about a purely internal act, known only to God, such as fear, which consists in the trembling of the mind, and therefore they would not be more credible." Thus, Mascard, *De prob. concil.*, 1057, no. 4, correctly states. And the Sacred Roman Rota, Decis. 334, no. 9, part. 11, states: "However, fear is not proven to invalidate a marriage by witnesses who do not state about the circumstances of the threats; for they must testify about the fear and about the fear of which the specific case concerns, otherwise they are irrelevant." These considerations are all the more important in this factual case, since it concerns a marriage, in the celebration of which nothing is apprehended from the procedural acts, nor even a slight fear. *Acta*, Tom. XXVII, fol. COOXIV, 6.

[*Latin ed. p. 82*]

82. In Saint Gallen (in Helvetia), a case is being examined. It seems scarcely, or perhaps not at all, possible that a bride, forced by grave violence and fear, would approach the altar, express her consent, and participate in the marriage festivities, without some witness observing a sign of coercion or unwillingness in her. Similarly, the parish priest, who joined the couple in the marriage blessing, appears not to have perceived anything indicating force or fear in the case. He himself, of course, in the present cause, having already emigrated to American regions, could not be cited as a witness; but, according to the testimony of the woman, he does not seem ever to have doubted the validity of the marriage. Indeed, when asked "why she had waited so long with her request," she replied, "I had already asked the parish priest, Father Frei, about this matter, but he refused to consent, because he demanded that both I and my husband present the same request." Certainly, if the parish priest had believed that the case concerned the nullity of the marriage, and not merely the granting of a dispensation regarding a marriage already valid and not consummated, he would have readily and willingly consented to the woman's request. Otherwise, what exactly was the mind of the parish priest, we learn from the following testimony of the husband: "The bride," he said, "completely consented to the marriage and hoped that it would be celebrated before the feast of Easter, which would prevent any further objections from the parish." Now, considering these circumstances, it is helpful to examine what appears in the current records regarding the alleged violence and fear. First, let us hear the wife's testimony regarding her feelings towards her husband and her own fear in entering into the marriage: "From the beginning, I had a great aversion to the marriage with Kurath. I felt no inclination towards him; and I have repeatedly

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manifested my displeasure towards him, both by signs and words." — When asked whether she truly feared that her parents would deprive her of her inheritance if she did not enter into this marriage, she replied: "I truly believed that my parents would carry out the threats they made regarding the deprivation of my inheritance. My parents said that they intended to carry out this deprivation while they were still alive, against which there was no legal recourse: and I believed this to be true." — Further, when asked whether her father had treated her harshly and cruelly on this matter,

[*Latin ed. p. 83*]

In Saint Gallen (in Switzerland), when questioned about the matter, she responded: "My father threatened me with reproaches; however, he did not inflict any violence upon me." The father of the woman then testified: "My daughter is a virtuous and truthful woman; and Kurath, that is, her husband, has often lied to me; otherwise, I would not have given him my daughter. Indeed, he declared that some misfortune would befall him if I did not give him the girl as his wife; Dorothy always refused him." Furthermore, "I was the cause, along with her mother, that the girl married this man; I certainly once said that I would deprive her of her inheritance if she did not consent to the marriage; however, I did not mean that so seriously." Dorothy Manhart, the mother of the woman, testified: "The faith of my daughter can be trusted; she has been truthful since childhood. I would not have much faith in the man, Kurath. We gave our daughter to him only because of the pretense that he had made, that she would be fortunate to live with him. The daughter, before the marriage with Kurath, often showed him disdain and did not want to marry him; but we, as parents, trusting in the promises of this man, urged her to marry. The father threatened to deprive his daughter of her inheritance, which she believed to be true. Only through our persuasion did she consent to the marriage." Furthermore, in addition to the parents on the woman's side, four witnesses were called, namely: Paulina Flobi, her sister, Lucas Manhart, Berta Manhart, and Gebhardus Gantner, the son-in-law; it appears that all of them were connected to the woman's parents by friendship. On the man's side, only three witnesses were presented, namely: Antonius Wildhaber, Baptista Hermann, and Catharina Manhart, but there is nothing in the records regarding their relationship with the couple, from which a judgment can be made. When the witnesses were questioned: "Whether it was known to them that Dorothy did not show any signs of affection to her husband from the beginning, and that she showed him harshness and offense," they responded as follows: "My sister often wept before the marriage and said that she did not want to marry this man, and that she was doing so only because her parents were urging her to do so." Thus said

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Paulina Hobi.

[*Latin ed. p. 84*]

84 SAINT GALLEN (in Switzerland) "I have often observed that Dorothy was not inclined towards Kurath; once, she dismissed him with harsher reproaches and curses." - Thus, Lucas Manhart, who had known the couple for five or six years. "I know nothing of the matter." - Thus, Berta Manhart, whose husband is the brother of Dorothy's mother. "I am ignorant of the actual circumstances; however, it seems to me that discord between Kurath and his wife was stirred up by others, who told him that his wife was extravagant and unfaithful." - Thus, Gebhardus Grantner, adding that he had known Dorothy from a young age. "I have heard that the bride did not seem to favor her fiancé; people were surprised that she would marry him." - Thus, Antonius Wildhaber, who knows the husband better than the wife. "As a neighbor of theirs, I have not observed any discord or quarrels between the couple. I do not know what happened before their marriage; I only know that there have been various rumors about this matter." - Thus, Baptista Hermann. "From others, I have heard that the bride, before the marriage, had, in a certain way, mocked the groom." - Thus, Catharina Manhart, the midwife. Again, in another question: "Whether it was known to them that Dorothy feared great losses if she did not marry Antonius, and whether her father had threatened her with such things," the same five witnesses cited stated that they knew nothing about this matter, nor had they heard anything. The woman's own sister testified as follows: "I only heard about threats regarding the inheritance later; often, I heard reproaches that Kurath did not want to marry." Antonius Wildhaber stated: "I have heard that the parents urged their daughter to marry, and that the father was threatened regarding the inheritance." But now, what the husband himself has testified must be inquired into, since his testimony holds so much weight in a matter of this kind that, as is widely taught, one must stand aside from the force and fear of his oath, unless he is proven to be perjured. (S. C. C. in Praemislien, on July 18, 1778, and in Rome, on August 9, 1817). When questioned, "Whether he, ALIA, had known the true feelings of his fiancée,"

[*Latin ed. p. 85*]

In Saint Gallen (in Switzerland), Anthony Kurath, under oath, answered "no" to a question and added: "The bride was entirely willing to celebrate the marriage, and she had intended for it to take place before the feast of Easter, which the previous pastor might have opposed. However, I arranged for the marriage to be celebrated after Easter." - When questioned again: "Are you certain that Dorothy truly gave her consent to marry you?", he said, "Yes." The judge recognized the importance of the husband's testimony, and therefore, he questioned the wife in this manner: "Did you

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not desire that the marriage be celebrated before the feast of Easter?" - To which she replied: "Since I saw that my parents were entirely in favor of this marriage, I consented to the marriage taking place soon; however, Kurath was urging me more and more. I do not know if I urged for the marriage to take place before Easter." Again: "At the very moment when you declared your consent, were you convinced that you would become the wife of this man?" - She replied: "Yes. I considered myself to be his wife." Finally: "Did you intend to abstain from marital relations with your husband for a time?" She said: "Indeed, the answer is yes: I heard that Kurath had some suspicions about me, and therefore, I agreed with him to abstain from such relations for a time. Afterwards, I would have been prepared, because I had to fulfill my obligation as a wife." And since I must declare what I myself felt about this matter, I say that from the foregoing, it does not appear that this marriage should be considered invalid. And indeed, after carefully considering all the testimonies of the jurors, the following points are revealed, which, in my opinion, do not have sufficient weight to invalidate the marital bond, and I will soon present them. a) First, credit should be given to the assertion of the bride, Dorothy, that from the beginning she was not favorably inclined towards the groom, Anthony, and that she was even somewhat averse to him, as this is confirmed by the testimony of her parents and her sister and another relative. However, one may doubt the intensity of such aversion.

[*Latin ed. p. 86*]

86. In Saint Gallen (in Switzerland), it is permissible, if neither the husband nor any other witness, to whom Dorothy was known from her early years, declared under oath that they were unaware of any aversion of her mind to this marriage.

b) Furthermore, even if it were established that the girl's mind was initially averse to such a marriage, this would not be conclusive unless it is also proven that she maintained this aversion up to the very moment of the marriage ceremony itself. *Conscientiae de Separ. thoril. 1, cap. 8, n. 13*. This proof, in the specific case, is all the more necessary, because a considerable interval of time elapsed between the two extreme points, and within which, if she had changed her mind, the matter would be quite remarkable. For, as Pitonius says in *Discept. Eccl. 32, n. 5*, "such a change is more easily presumed to occur in a woman's will, since this, both in other matters and especially in marriage, is regularly momentary, variable, and changeable." Cf. Decius in *Const. 166, n. 26*. Moreover, if arguments for a long-lasting and constant aversion to the marriage are presented, the silence of witnesses on this matter seems to suggest that such a change did not occur. Indeed, one of them said, "The neighbor observed no discord or quarrel between the 'spouses'." And the woman herself said: "Since I saw that my parents completely desired this marriage, I consented."

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c) From the very fact that the woman's parents completely desired the marriage, it does not necessarily follow that her consent was obtained through grave coercion and fear, to the extent that it can be said that the necessary freedom to enter into the marriage was lacking. The doctrine is now "common and accepted" (St. Alph. *de matrim., n. 1056) that, beyond the mere will of the parents, which is naturally inclined to produce either no fear or only a simple, reverential fear, "blows or threats or fear of some grave evil, etc." must be added in order to vitiate consent. And, when it is a question of threats from the parents, it is not sufficient to instill fear in the man if some threats have been uttered only occasionally, as is customary, and without a serious intention of carrying them out. "It is necessary," says Sánchez, *De matrim. Disp. VI. num. 8, "that threats be habitually carried out, because when someone is accustomed to making threats and does not carry them out, it is as if they did not threaten at all, and the man..."

[*Latin ed. p. 87*]

In Saint Gallen (in Switzerland), threats of this kind, which are considered either insignificant or of little consequence, do not move a prudent person, as they are deemed vain and of no importance, – and threats ought to be considered a grave evil. Therefore, less is presumed about a father who is about to carry out threats, due to paternal piety. However, if the father is cruel and accustomed to carrying out such things, the same must be said of him as of others.

Furthermore, there is nothing whatsoever to demonstrate that Dorothea's father was of such a fierce character, and indeed, the very words she spoke before the judge seem to reflect a paternal sentiment: "I said once that I would deprive my daughter of her inheritance unless she consented to the marriage; however, I did not mean it so seriously." The entire account and essence of the matter seem to be contained in the mother's words, as she stated: "(The daughter) consented to the marriage, led only by our persuasions and obedience." Furthermore, he who has given obedience to his parents, especially when it concerns entering into marriage, cannot reasonably be said to have acted under duress and with grave fear. For no one has ever contended that the persuasions, exhortations, and counsel of parents have a violent nature and malice; these do not compel, but, as Menochitis Cons. 00, n. 15 states, they stir up the free will.

d) Nor is there any suspicion of violence arising from what followed the marriage. Indeed, the silence of the witnesses regarding this matter is a strong argument, as they observed nothing during or after the celebration of the marriage that would have seemed unusual in such a case. Furthermore, the woman did not immediately go to her husband's home on the first day, but this was done for particular reasons and by mutual agreement. Regarding the marital intercourse, the Consultor states: "The universal rule

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is that every marriage is presumed to have been consummated, or to have been perfectly accomplished, once it has been established that the spouses had the opportunity to have intercourse with each other." Furthermore, proof is admitted against the presumption of a person, when it is found to be unconfirmed by any law; against the presumption of the law, i.e., that which is simply introduced by law, a remedy is also granted, but proof is lacking.

[*Latin ed. p. 88*]

(in Helvetia) are more clearly and fully established; Pacian. de probat. I. 1 cap. XI; but against presumption of law and of fact, which certainly has passed into the force of law, proof is not regularly admitted, or at least not unless it is most clear and most evident. Furthermore, when spouses, confessing that they have frequently slept alone in the same room, or even in the same bed, and declare that they have not consummated the marriage, this is understood in two ways: either they intend to exercise their right and to yield to the natural instinct of concupiscence, saying that they have not attained the desired end because of a physical inability to copulate; or, although both are in the prime of life, and are able to have intercourse and to enjoy each other's bodies, they nevertheless contend that they have not done so. If the former is the case, the presumption of consummation is only legal, and easily yields to the arguments of impotence and virginity, or even to the sworn declaration of the spouses. If, however, the latter is the case, that is, if a man, truly young and vigorous, has not only lived in the same room, but has also slept in the same bed with a girl, his wife, who is also in the prime of life and capable of intercourse, then the presumption of consummation is said to be violated, and the truth is held until, besides the conforming testimony of the spouses, no other most reliable demonstrations are presented to prove beyond all doubt the lack of consummation (from cap. Litteris 12 and Cap. Tertio loco de Praesumpt.). Therefore, it is established in the Sacred Congregation that, from the mere possibility of carnal consummation, especially if it is known that the spouses have slept in the same room or bed, intercourse is presumed to have taken place, and unless it is fully proven otherwise, dispensation is denied; in Chien. Matr. 15 December 1792; Spoletan. Matr. 20 December 1873. With this premise, the Consultor says, "We must investigate three things from which, by customary law, judgment is formed concerning the act of consummation, namely, the statements of the spouses, the testimony of a third party, and the examination of the woman's body." First, the woman, the plaintiff, questioned by the judge, "Whether she has truly decided not to have intercourse with her husband at a certain time, in order to

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demonstrate that false and injurious rumors against her are unfounded."

[*Latin ed. p. 89*]

In Saint Gallen (in Switzerland), "she had already agreed with the man about this matter before the marriage, and afterwards again." — Questioned by the defender of the marriage: "Did the man consent to abstinence concerning the conjugal duty?" — She said: "He consented until autumn; afterwards, I would have been prepared for the conjugal act." — Again: "Did the man request the duty from her?" — She replied: "Once; but in such a way that consequences were prohibited; which I denied. This happened after a month, when he was returning from Mons." — "Can she truly and sincerely affirm that she has not been subjected to the conjugal act by her husband, and that she has not been harmed by him?" — Answer: "My husband never had conjugal relations with me." — Questioned by the judge: "Has she ever been in the same room or bed with the man?" She said: "For several nights, we were in the same room, but not in the same bed, which never happened." — Thus, the woman was questioned legally. Afterwards, she was recalled before the judge, to express her opinion about something her father had said, and she spontaneously declared: "That I had said, through a completely involuntary error in my answer to the official question under number 13, that 'this last thing never happened.' Now, however, it has come to my mind that once, she and the man were together in the bed. She affirms, however, firmly and severely, that nothing at all happened on that occasion, saying: 'Neither he nor I requested anything at those moments. This happened on days close to the wedding.'" — Thus far, the wife. The husband, however, was questioned: "Did you truly agree with her beforehand that you would abstain from intercourse, so that less room would be given to bad repute?" He answered under oath: "No; nothing was agreed upon about this matter; otherwise, I would not have taken her as a wife, nor would I have given my consent to abstaining for a time. I knew absolutely nothing about this bad reputation." — Again: "Have you ever been in the same room and in the same bed?" Answer: "For four or five days, we stayed in the same room in the evening; but we were never in the same bed, because the woman firmly refused such an act. I, for my part, refrained."

[*Latin ed. p. 90*]

90. "Saint Gallen" (in Switzerland), hoping that it itself might change its opinion on this matter. — "Does he truly believe and know that he can firmly say and affirm that he has not had marital relations with her?" — Response: "Never." — Therefore, with the exception of this last point, a complete disagreement appears between the spouses regarding the first two points; therefore, their separation is legally justifiable; indeed, unless it is supported by solid testimony from seven witnesses or an examination

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of the body, objective faith does not seem to be due to them. However, in order to corroborate the declaration of the infirm spouse, unanimous and explicit testimony from seven witnesses favorable to them would be necessary, but this is lacking and uncertain, as can be seen from the procedural acts. Indeed, primarily, not seven relatives or affines from both sides were produced to form the "Textus in Cap. Litterae de frigid, et ma e f.," but only three from the husband's side and six from the wife's side, "due to the circumstances, as they say, and the difficulty of the matter itself," which certainly offends the law in this regard. — Furthermore, I do not believe that these witnesses were properly questioned, as prescribed by the Instruction of the Sacred Congregation of the Council of August 20, 1840. Moreover, there is nothing to suggest that an examination or confession of the spouse was presented to the witnesses; nor, of those reviewed thus far, was any other question proposed to the witnesses except this: "Do they believe that credence can be given to the spouse's statements?" which, of course, seems too general. Therefore, regarding the consummation of the marriage, the witnesses responded in a general manner. It is barely worth noting that, with regard to honesty, the husband was not subjected to any exception greater than this, nor even the wife, whom we know has obtained a civil divorce, with that intention, in order to almost force the ecclesiastical judge to render a favorable judgment. Now, we must turn to the third argument for lack of consummation, which is derived from the examination of the woman's body. Such an examination of organs can only serve as supplementary proof in the case of "Cap. Causam de proh." — Zach., 1.

[*Latin ed. p. 91*]

Saint Gallen (in Switzerland), Question 91, Medical-Legal Questions, Book IV, Title 2, Question 1, paragraph 14: I do not hesitate; but when it is a question of supporting a weakened structure, who would deny that a strong support is absolutely necessary? However, in order to properly judge the validity and strength of this supporting evidence in the matter of proof, it is necessary to consider what was established by the Sacred Congregation under the date of August 22, 1840 (1). It is evident from the procedural acts that the norms presented by the Sacred Congregation were disregarded by the episcopal curia of Saint Gallen. In these acts, there is nothing concerning the examination of the body, except for two written testimonies from doctors, who state that they examined the woman, Dorothy, "according to the rules of the medical science," without any previous bathing; and that, if one listens carefully, she was found to have "the membrane of virginity violated, the hymen broken on the right side (thus), and in such a way that it is customary in married women"; and that, in the same testimony, "all the necessary qualities of perfect virginity were present, except for a small lesion on the hymen on the left side (thus)."

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However, this lesion, as both doctors were taught by the woman, "most likely originated from an experiment performed by a doctor many years ago, when that doctor inserted a finger into the vagina." "This doctor," it is read in the summary of the proceedings, "according to the common opinion of the judge, the parish priest, and even the defender, cannot be summoned without a significant risk of damage and scandal." It is not necessary to demonstrate to anyone how little weight such extrajudicial declarations, and even those that contradict each other, have. Having reached this point, the Consultor stated that it would be superfluous to inquire whether there are reasons for requesting a dispensation. Nevertheless, he discussed these reasons, and found no proof or just reason upon which to advise His Holiness regarding granting a dispensation. THE OPINION OF THE CANONIST. Having been entrusted with this task, the Consultor stated that he would first address the question of fear in this case (1). Instruction regarding the conduct of matrimonial proceedings is found in Volume I, 439.

[*Latin ed. p. 92*]

92 SAINT GALLEN (in Switzerland), present; secondly, concerning the lack of consummation, and thirdly, concerning the inappropriateness of a dispensation in this case. Concerning Fear. It cannot be the case here that the fear was anything other than reverential. It is certainly true that such fear, due to the variety of circumstances, can be grave. But in the case presented, from the responses of the bride herself, it appears that the fear was not grave. And, if there were any doubt on this matter, the very words offered by the Reverend Defender, Father Schmid, would suggest that "the father and mother showed the greatest esteem and charity towards their daughter in their responses, of which the daughter could certainly not have been unaware"; for it was certainly more difficult for their daughter to contradict their insistent requests. However, there would be doubt as to whether, in this case, fear should be considered grave, and the common teaching of doctors is that it should be judged according to the value of the marriage, both because marriage is a favorable cause, and because of the reverence due to the Sacrament. Grury, Compendium Theologiae Moralis. The petitioner herself does not insist much on this circumstance of fear, and rather brings it up only to demonstrate that there is no hope of future reconciliation. Concerning the Lack of Consummation. It cannot be said with certainty in this case, based on the examination of the woman's body, for the doctors found in it some injury to the signs of virginity. The woman stated that this injury was caused by some action of a doctor, which cannot be verified. And, indeed, a doctor who has already perversely abused his art will hardly be induced to testify against himself. But can anything certain be concluded from this injury regarding the consummation? In our times, legal medicine does not seem to consider the presence or absence of

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the signs of virginity to be of such importance. Bossu, in his Anthropology, vol. I, p. 329, fourth edition; the same seems to be the opinion of the doctors who examined the body of Dorothy Hobi. Therefore, from the examination of the body in this case, nothing certain can be deduced, neither for nor against the consummation of the marriage, although the doctors are more inclined to believe in the lack of consummation. The testimony of a seventh party is usually of little weight in a similar case, for who can know, besides the parties themselves,

[*Latin ed. p. 93*]

SAINT GALLEN (in Switzerland): Nine spouses, having never even shared the marriage bed with their partners? Witnesses, in this matter, can only testify to the integrity and truthfulness of the spouses, and all unanimously gave testimony in favor of Dorothy. However, in the testimonies of the spouses, there are certain indications that would suggest a moral certainty of the lack of consummation, unless some other factors were found that would cast doubt on the sincerity of Dorothy, concerning whom we are primarily concerned. Concerning the inappropriateness of the dispensation. I see that all in this case have before their eyes the scandal of the people. But, the reasons that are presented for the denial of the dispensation, if they were valid for the sake of scandal, would never allow marriages to be dispensed in those places where these reasons are present. If the people find it difficult to distinguish between a valid marriage and a valid and consummated marriage, which seems strange to me, I do not believe it is impossible to educate them on this matter. Certainly, the people must be educated. The Apostolic See has the power to dissolve a valid but unconsummated marriage. Once educated, they will not confuse civil marriage with the sacramental marriage of the Church. Therefore, the reasons presented to me do not seem sufficiently firm and adequate to prove the inappropriateness of the dispensation, assuming the lack of consummation of the marriage. But this very lack of consummation is not entirely certain. OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE OFFICE. Nothing that Dorothy Hobi has stated moves me to dissolve the marriage, which she duly entered into on May 16, 1887, with Anthony Kurath, in the parish church of the town of Flums. Indeed, she alleges a hindrance from the head of force and fear, in order to declare the marriage null and void due to this defect; and then she asserts the lack of consummation of the same marriage, in order to obtain at least a dispensation over the valid but unconsummated marriage. But these are so weakly founded that they have not yet been able to convince anyone. As for the objection of force and fear as a hindrance, against the vote of the

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most religious Bishop of Saint Gallen, it is unanimously...

[*Latin ed. p. 94*]

In Saint Gallen (in Switzerland), learned Counsel are divided; a distinguished Canonist deems the asserted lack of consummation of marriage to be far from certain, while a Theologian, after careful and praiseworthy consideration, judges that it should not be brought before the Most Holy See, "lest, concerning the same [marriage], as if it were valid and not consummated, a dispensation be granted, both because it is not certain that there was a lack of consummation, and because, even if sufficient and probable reasons suggest a dispensation, the greater good of the faithful seems to require that it not be granted." I fully adhere to this opinion, and lest I appear to be repeating matters, I request, without delay, that a negative response be given to the questions mentioned above. With these preliminary remarks, the following 94 Questions are to be considered:

I. Does it necessarily follow that in a case, there is a nullity of marriage? And, in this regard, negatively.

II. Should the Most Holy See be consulted regarding a dispensation from a marriage that is valid but not consummated in a case?

RESOLUTION. The Sacred Congregation, after discussing the matter on April 1, 1894, decided to respond: Negatively, to both.

FROM WHICH THE FOLLOWING MAY BE GATHERED:

I. No one should be considered to have entered into marriage under duress or fear, and thus to have nullified the contract; but such duress or fear must be of a kind that destroys the very consent, or the necessary freedom of consent.

II. Therefore, not every fear has this effect, but only a grave fear, or one that falls upon a man or woman who is resolute; namely, when a harm is feared, whether imminent or future, which cannot be endured at all.

III. However, such fear must be legally proven by the one alleging it; because no one is presumed to have entered into marriage in such a way, when it is clear to the Church that the consent, outwardly given, was present.

IV. The fear, by which no marriage is declared to be null, cannot be proven by witnesses who do not speak to the circumstances of the threats; for the witnesses must testify about the fear itself.

[*Latin ed. p. 95*]

SAINT GALLEN (in Switzerland), concerning which the specific case is discussed, alleging threats, beatings, and similar acts, these are indications of fear. V. Indeed, if witnesses were to testify about fear without alleging external signs of it, inducing fear, then they should not be believed, because

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they would be testifying about an act that is purely internal, known only to God; such as fear, which consists in a trembling of the mind. VI. All of these things seem to apply in this case; since nothing was observed during the celebration of this marriage that would manifest even a slight fear; and it is surprising that none of the witnesses observed the woman being led to the altar by force and with great fear. VII. It must be demonstrated that the aversion of the patient persisted until the very act of marriage; because if there are intervals, a change can be presumed, especially in a woman who is changeable. VIII. The presumption of a violent consummation of the marriage should be held to be true until, besides the testimony of the conforming couple, other proofs are brought forward, clearly demonstrating the lack of consummation, such as an examination of the woman's body.

S. JAMES OF CHILE, regarding a dispensation for marriage, of May 12, 1894. Session 24, chapter 1, concerning reforms.

SUMMARY OF THE FACTS. Charles Mauro, an Italian young man, residing in the city commonly called Valparaiso, in the archdiocese of Saint James of Chile, was received into the home of the wealthy Anthony Bafico Casanueva, who had a daughter named Theresa, not yet 20 years of age.

[*Latin ed. p. 96*]

96. Charles, who, as it appears, was a wicked man and exceedingly greedy for gold, desiring to obtain the wealth of Teresia, and seeking to arrange a marriage with her, began to act accordingly before her parents. Meanwhile, this most cunning man was selling himself to Teresia's parents, portraying himself as a religious and virtuous individual. Therefore, considering that it would be very advantageous for their daughter if they gave her to this young man in marriage, the girl's parents urged her to accept this marriage; and after obtaining a dispensation from the marriage banns, the marriage was duly celebrated in the year 1883, on the very 5th of February, before the pastor of the parish church of the Holy Spirit in the same city of Valparaiso. A few days after the marriage had begun, the bridegroom, according to custom, set out on a pleasure trip, and they went to the city, where they stayed with the man's parents for eight months. But this was not a happy experience. For Charles immediately began to insult and berate his wife, and he progressed to the point that, according to what is recorded in the documents, he even struck her with a rod. Therefore, when the married couple returned to their homeland, the father-in-law severely rebuked Charles, who, bearing this badly, said farewell to his wife, departed, and never returned. At that time, Teresia and her parents claim to have learned of Charles' absolute impotence. The girl reported that, on the very first day after the marriage, Charles had asked her to fulfill the conjugal duty, but she had refused at that time; and that he had never again asked for the marital act, but rather had often said: "I am impotent, and I cannot love you," which the girl affirms that she did not perceive

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at that time. In these circumstances, Teresia, urged on by her parents, presented her case to the Supreme Prince, requesting that the sacramental marriage be declared null and void due to the husband's impotence; or, if that were not possible, that a dispensation be granted. Immediately, on August 6, 1892, letters were sent to the Archbishop of St. James of Chile, requesting that he perform this task, with all due process according to the Benedictine Constitution and the Instruction of the Holy Congregation of the Council, with the power to delegate this to others. Then, there, with a duly constituted tribunal, legal proceedings were initiated on December 9th.

[*Latin ed. p. 97*]

Of Saint James of Chile, in the same year, only concerning the lack of consummation of marriage, because the wife, due to the absence of her husband, had deserted the province. The woman was heard, and she, having sworn an oath, asserted the lack of consummation of the marriage; then, witnesses, chosen by the woman, were examined under oath, who explicitly commended her virtue, piety, and truthfulness. However, the man who resided in Rome appears not to have been summoned to appear before the judges. Subsequently, after only a quarter of an hour's bathing due to the woman's infirmity, an examination of her body was carried out by three midwives, instructed by experts, while the mother of Teresia performed the duties of a matron; and all, under oath, unanimously declared the woman to be a virgin. Furthermore, one of these doctors, along with Mistress Ernestina Perez, who performed the duties of a midwife in the judicial examination, had, as early as April 1892, examined Teresia's body outside of the judicial process, and their report concerning the woman's virginity is found in the records. With these things established, the case was transmitted to the Sacred Congregation of the Council. Then, the man was summoned by order of the Sacred Congregation, but he refused to appear. A Synopsis of the Arguments: DEFENSE OF THE WOMAN. He who undertook the defense of the woman divided his argument into two parts, in the first of which he spoke concerning the lack of consummation of the marriage, and in the second, he discussed the reasons for granting a dispensation. And beginning with the first point, he presented first the testimony of Teresia herself, attesting that the marriage had never been consummated. This kind of oath, that the man had not been able to have relations with her, has always been considered valid according to the teaching of the Holy Canons, as is proposed to you in Chapter [reference to a specific chapter]. Concerning the proofs, the text in canon [reference to a specific canon] and Chapter [reference to a specific chapter], which are of the greatest importance in this matter, considering the extraordinary virtue and religion of the woman, and the unanimous suffrage... [The text

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is incomplete].

[*Latin ed. p. 98*]

98 The venerable Saint James of Chile, the advocate maintains, deserves praise for this, and he argues that this testimony, which concerns the state of the soul, and which, if it were not true, would prejudice the soul, merits complete belief, and should be held as absolute truth, according to the Gloss, in Chapter "Mulier," at the word "Periurii," concerning oaths, and in Chapter "Significasti" 18, at the words "Credendum," and in the treatise "De homicidio." Furthermore, he continues, it does not impede the argument that the sworn testimony of Thérésia, concerning the lack of consummation of the marriage, is also supported by the husband, who persistently abandoned his wife. For Charles's silence confirms the argument concerning the lack of consummation; indeed, it was of the utmost importance for him to assert that the conjugal bond had become indissoluble, from which his miserable condition could be turned to the better, which was the sole thing he had in mind when entering into the marriage. Moreover, the advocate notes that the actress's testimony, not only is confirmed by all the witnesses in general, but also specifically points to the cause of the lack of consummation of the marriage, attributing it to the husband's impotence. It is also relevant that among the witnesses for Thérésia are her mother and her uncle, Raymond Cruz. For, firstly, it is established in law that properly examined and sworn witnesses provide full proof of any condition or quality, as taught by the Rota, in the case "Melevitana, Separatio," of July 13, 1817, section 6, and in the case "Romana seu Veliterna, Pecuniaria," of January 20, 1817, section Cesarei, and of July 4 of the same year, section Serlupi; furthermore, in matrimonial cases, parents and relatives can not only be admitted to give testimony, but are preferred, because the matters at hand are those that otherwise could not be ascertained. See also Cardinal Cossi, "De separatione thori coniug.," Book 3, chapter 8, section 13; and Celestine III, in "Can. Videtur" 36, question 6, etc. Therefore, from the concordant testimonies of the seven sworn witnesses, together with the actress's testimony, it follows that there is an undeniable moral argument for the lack of consummation of the marriage, which by itself would be sufficient, with just causes present, to grant a dispensation.

[*Latin ed. p. 99*]

Saint James of Chile 99: "But it is not necessary," he said, "to call witnesses, since a physical proof of virginity can be presented." He observes that the physical examination was conducted with such diligence and according to the rules, that no prescriptions mandated by the sacred canons in such cases were omitted. Three midwives and two doctors, under oath, testified to the integrity of Teresia. Therefore, five experts in their fields, the advocate argues, have rendered a certain and absolute judgment regarding

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the woman's virginity, based on the totality of signs, especially the integrity of the hymen, and also the absence of any scars or fissures; with these things established, the virginity of young women and the unbroken state of marriage have been declared by all tribunals. For either these are the most evident signs of virginity, or none are given for discerning virginity. If, indeed, a certain and undeniable physical proof of virginity exists in the woman; otherwise, the woman subjected to the examination would have suffered torment without any relief. Therefore, since, in addition to other signs of virginity, the midwives found in the woman an intact hymen, which all authors of anatomy and forensic medicine recognize as the most certain and undeniable proof of purity, as Zacharias, Quaestiones Medicinales, book 4, title 2, question 1, paragraph 1 and following; Bartolini, Institutiones Anatomiæ, book 1, chapter 31; – the advocate concludes that it is not lawful to doubt that Teresia is still a virgin, and that her marriage has been consummated only recently. Having thus established this as a prerequisite, and as the foundation for the dispensation, the advocate then proceeds to present the reasons for the dispensation, and first he adduces the man's morally certain impotence. He proves this impotence primarily through the testimony of the woman, as recounted above: since it is sworn, and given by a religious woman, it cannot be disregarded. To this are added the witnesses Balbina Casanueva, Virginia Montenegro, Herrera de Guna, Raymundus Crux, and Anthony Montt.

[*Latin ed. p. 100*]

Of St. James of Chile: A true, or at least a probable, impotence constitutes, above all, a reason for granting a dispensation. For in such a case, rather than a proper dispensation, it is said to be a prudential administration of justice, declared under a more noble title of nullity of marriage, as taught by Ursaya, volume 3, part 2, discussion 21, paragraph 104. Another reason for granting a dispensation is derived from the extreme aversion of the parties, with no hope of reconciliation and the restoration of conjugal harmony, which, indeed, is considered a very serious reason for granting a dispensation, as stated by Lancellotti, in Ursaya, volume 3, part 2, discussion 21, note 62, by Corradus in *Praxis disp.*, book 8, chapter 7, paragraph 33; by Cardinal De Luca in *De Matr.*, discussion 9, paragraph 8, and generally by all Canonists. And it is declared that this aversion is undoubtedly verified in this case. Finally, a reason is sought from the danger of incontinence and the fear of fornication, in which the woman, still in the prime of her years, and not yet deprived of the privileges of nature, is most wretchedly situated. This danger is well known to the plaintiff, and she intends to avoid it by entering into other marriages, with a prior dispensation. However, the utility of the petitioner as a reason for granting a dispensation is taught by Sánchez, in *De Matr.*, book 12, discussion 15, paragraph 19, to be a common teaching.

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OBSERVATIONS OF THE DEFENDER OF THE BOND: On the other hand, the defender of the bond, with regard to the alleged impotence, observes that Teresa only discovered that Charles, after he left her and would not return, was a man of no standing, a contemptuous of the Catholic religion, perpetually greedy for wealth, and, most importantly for the matter at hand, utterly inept for marital duties. Indeed, Teresa brought forward these and other very serious accusations against Charles, but presented no, or at the very least, very weak, proofs. Certainly, with regard to the impotence of her husband, she alleges no other reason than that he once requested the marital duty, but she refused. Then he no longer requested the marital duty, saying that he did not care, since he was impotent. However, the orator notes that the witnesses brought forward by Teresa are very devoted to her.

[*Latin ed. p. 101*]

Saint James of Chile 101 either completely ignored this, or they claim to have heard it from the same Teresa. After these points, the defender argues that, while Saint Charles ceased to be the petitioner's advocate, and the process was not conducted by the Most Reverend Vicar of the City, as is required by law due to the man's domicile and forum, but rather by the Most Reverend Prelate Saint James of Chile, he expressly desired that the same process be carried out according to the form of the Instruction of the year 1840, (1) in which it is stated: "If anyone should be found to be absent, who cannot conveniently access the city, either due to the expense of the distance, or to the insistence of a party, or, if that is absent, to the insistence of the defender of the marriage, they must be examined by the Bishop of the diocese in which they reside;..." Indeed, within the very terms of this concession, the aforementioned Prelate Saint James of Chile was expressly granted the power "to delegate someone for the examination of the parties and witnesses who reside outside the diocese." Furthermore, he insists that, never was the Most Reverend Ordinary of the City requested to examine the man and others from his household; none of them, whether in Rome or elsewhere, were summoned for a judicial examination. And this, he says, clearly violates not only the terms of the Instruction of the year 1840, or the aforementioned rescript, but also the very norm established by law in such proceedings, as testified by Gasparri, *De Matrimonio*, number 1487 - there - "The sacred canons require in matrimonial cases, especially if the matter concerns impotence or the consummation of marriage, the testimony of the 'seventh witness,' that is, the sworn testimony of seven witnesses from each side, that is, fourteen close witnesses, or at least, if close relatives are lacking, neighbors, from chapters 5 and 7 of *De Frigidis et Maleficiatis*." Therefore, the advocate believes, it is not surprising that Charles, seeing that he and all his witnesses of the seventh witness were being neglected, sent a bond to Saint Charles, established by Saint C., ac-

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cording to the customary formula for resolving doubts. It would perhaps be as if he had used his legal rights. For, in such proceedings, Saint C. does not usually require a bond for the aforementioned agreement on doubts, unless the party is first in contempt. However, he was "not in contempt."

(1) This Instruction was referred to in Volume IV, 439.

[*Latin ed. p. 102*]

102 Saint James of Chile is the greatest, who, having proposed three remedies, or one for three, which is commonly called peremptory, when summoned, disregards the judgment he is to render... (and) contumacious persons are not considered to be present, unless those who ought to obey do not comply: that is, those who belong to the jurisdiction of him to whom they refuse to submit. » L. 53 ff. % 1 and 3 Concerning judicial matters, and the effects of judgments. But if, the advocate continues, the contumacy is to be remedied not by the judge's order, but by the requests or invitations of private individuals, he can freely grant what the advocate writes: "Charles, repeatedly requested to appear in court, constantly greedy for wealth, refused, stating that he would comply with the judge's order, provided that a large sum of money were given to him"; yet, nevertheless, the advocate himself could not absolutely declare what he adds: "Having observed the man's contumacy, he was summoned once more by order of the Sacred Congregation. Furthermore, Teresia herself, who in the introductory document of the case mentioned the requests made to her to accuse the man's contumacy, did not present any letters in which the man begged the girl to request Saint James of Chile to hold a hearing to declare the marriage null. Nor, according to the advocate, is the situation of the actress improved if only a few things are recalled that are presented in her favor. For with regard to the actress's confession, he alleges chapter 5 of *De eo qui eo gn. cons.* - there - "We reply to your fraternity that, solely on account of the confession of the spouses, they should not be separated, since sometimes some people may wish to conspire against the marriage..." But if neither of the spouses' sworn testimony can be believed, what if only one affirms the consummation of the marriage? This doctrine, he says, is clearly explained by Coscius in *Op. De sep. tor.*, book 2, chapter 18, n. 12: "Therefore, the confession of these spouses should not be taken into account, unless the asserted impediment is proven by other means, not only because of the suspicion of collusion, but also because such a confession is given not against, but in favor of the one who confesses, who wants to exculpate himself."

[*Latin ed. p. 103*]

Saint James of Chile 103, to which end it cannot be beneficial, whether it be a man, or a wife, or both together, that they should present it, as is noted ibid. Gloss, in the words "Confessionem," since no one can be a witness in his own cause. L. Nullus 10 ff. Concerning witnesses, L. Omnibus

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9 Cod. ibid. "J Jeque" believes that the testimony of the seventh witness is of greater weight: for it is a matter of witnesses from one side of the case and most devoted to that side, who furthermore have not been able to perceive any indication concerning the conduct of the spouse, and know nothing from others except from the aforementioned actress, and indeed at a completely suspicious time. For it is recalled that the spouses resided for a very short time in the city of Valparaiso, as the aforementioned actress narrates. Therefore, at the very time that the actress began to consider dissolving the marital bond, she also began to say things which she believed would more conduce to her intended end: and thus the aforementioned witnesses, at a completely suspicious time, were gradually instructed, and gradually also persuaded, concerning the credibility of the statements of that same actress. Moreover, the advocate continues, the witnesses were first carefully instructed about the actress's deposition in the judicial examination, and afterwards were questioned about the aforementioned circumstances. However, although they say that they generally believe the actress's statements, in particular, and especially concerning the asserted lack of consummation of the marriage, which is the head and the core of the matter, they testify no differently than concerning the alleged impotence of the husband. Likewise, the examination performed on the actress's body does not move the defender of the marriage, since it took place not shortly after the abrupt cohabitation of the spouses, but almost nine years after the husband had separated from his wife. Therefore, it is necessary to carefully consider here what Zacchias teaches in this special case, in Quaestiones Medii Juris, lib. 4, title 2, question 3, n. 1 and following. - there - < It should be noted... that if a woman has been violated by a single act, it is certain that she will encounter greater difficulty in ascertaining the truth of the matter. It will be much more laborious to ascertain corrupted virginity, defiled by a single act, committed long ago, and concerning that matter.

[*Latin ed. p. 104*]

104 In the case of St. James of Chile, I believe that one should rely more on presumptions and conjectures; because the signs obtained through the examination of the parts are somewhat slight, and can scarcely attest to anything about the truth. Although, indeed, in the first encounter, a violation and destruction of the hymen and the folds surrounding it, which are joined together and are part of the very uterus itself, may have occurred; nevertheless, if the woman abstains from intercourse afterwards, these parts cohere so closely, even with the very blood that flowed during the first intercourse, that they sometimes present a greater difficulty than would have been the case with the loss of virginity itself, as Severus also noted in *De notis viri*, book 1, chapter 7, so that from this it can be inferred that even in a pregnant woman, conspicuous signs of virginity can appear;... and since this is the case, I find no signs, and certainly no

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conjectural signs, which a medical examination might reveal, by means of which one could come to the conclusion of a corrupted virginity in this case, unless we consider the integrity and coherence of the hymen itself, which, however, can still be preserved in a corrupted state, and may be absent in one who is not corrupted, for many other reasons. As expert physicians can, in similar cases, probably conjecture something, Zacchias, in the aforementioned passage, number 8 and following, indicates several things that must be carefully observed, which the defender clearly has not noticed, but rather has hastily dismissed; but on the contrary, he wants to have everything concluded without having made a written report according to the instructions of the year 1840, § Judex. Finally, he does not consider the testimony of the physicians to be free from bias, since the actresses Ernestina Perez and Joseph Aguirre had already examined the body eight months prior, extrajudicially, and had given their testimony. He fears that perhaps another physician and two other midwives may have sworn allegiance to their authority and expertise; moreover, in the judicial examination, no one at all expressed any doubt about what Doctor Aguirre and Mistress Ernestina Perez noted in the aforementioned extrajudicial report, namely: that if any degree of defloration exists, namely, that the hymen is slightly affected, it must be attributed to the efforts of intercourse, or the labor of hands.

[*Latin ed. p. 105*]

SAINT JAMES OF CHILE 105. After these matters concerning dispensations were to be considered, but since the speaker does not find, from what has been said, any sufficiently demonstrated impediment, he considers it superfluous to prolong the discussion. Having considered both sides, the purpose was to resolve the following doubt: Whether, concerning a dispensation regarding a marriage that is valid but not consummated in chastity, one should consult the Most Holy Fathers. RESOLUTION. The Sacred Congregation of Rites, after deliberation held on May 1, 1894, decided to respond: Affirmative. From which the following may be gathered: I. Many testimonies from sacred canons assert that a woman affirms that she has not been able to cohabit with her husband; especially if she shines forth with unanimous integrity and piety. II. In matrimonial causes, relatives and parents are received, and often preferred to others, to give testimony, because they can more easily know those things which are hidden from outsiders. III. The principal sign of physical virginity, according to canonical jurisprudence, is considered to be the integrity of the hymen, along with the absence of any scars or fissures. IV. In this matter, it has been sufficiently demonstrated by experts in the medical arts that there has not been a lack of evidence of untarnished modesty in the body of the woman.

COSENTINA FUNERALS. On February 24, 1894, Session 24, Chapter 1, Concerning Reforms. In the Archdiocese of Cusentina, after unjust laws

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that undermined religious congregations, some municipalities, with the approval of the government, temporarily designated the churches of religious orders in public cemeteries; until new ones can be built, located away from dwellings, according to the laws in force. SUMMARY OF FACTS.

[*Latin ed. p. 106*]

106 CUSENTINA. Concerning the dispositions. However, as has frequently occurred elsewhere, in this archdiocese, religious orders, namely the Franciscan Fathers, were able to redeem and claim their own houses, which had been sold to private individuals. The Minor Observant Franciscans, in the town of Rende, and the Reformed Franciscan Fathers, in the town of Pietrafitta, were able to do this. Moreover, when such churches have been designated as public cemeteries, not only should the bodies of all the faithful be buried in the churches of these religious orders in the parishes of these towns; but also the funeral services, on the day of burial, and also on the third, seventh, thirtieth, and anniversary days after death, should be celebrated there, where the bodies of the deceased have been laid to rest. For some time, the parish priests and the religious orders amicably settled their rights; but opportunities for discord were not lacking, with the parish priests claiming, without any exception for the religious orders, the right to bury the bodies of their faithful in the same churches, and to perform whatever funeral services the faithful requested there; while the religious orders, on the other hand, asserted their exemption and their privileges regarding funerals. To resolve the matter, the Archbishop, seeing that there was no hope that the municipal coffers would be able to restore the cemeteries to their ordinary state, appealed to the Sacred Congregation of the Council under the date of February 3, 1892, presenting the causes of complaint and proposing the following questions for resolution: I. Whether the right to recite the office, to grant absolutions over the bodies of the faithful, and to sing Masses in the churches of the Franciscans, which have been dedicated as public cemeteries, belongs to the religious orders, or rather to the parish priests in this case. II. And, assuming a favorable answer for the parish priests; whether the same applies to them indiscriminately on the third, seventh, thirtieth, and anniversary days. Synopsis of the discussion. The parish priests first point out that the religious orders do not absolutely have the right to claim their privileges; for their churches receive the bodies of the faithful after they have been declared public cemeteries by the civil authority, and therefore the matter is outside the intention of common law. THE RIGHTS OF THE PARISH PRIESTS.

[*Latin ed. p. 107*]

CASENTINA 107. Truly, the faithful do not choose their burial place at will; rather, with few exceptions, they do not have tombs in pagan places,

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but are compelled by public authority to be buried in the churches of religious orders. Before the prohibition was imposed on citizens to choose burial in parish churches, almost all requested to be buried in those very churches. But the faithful desire that funeral services be performed over the bodies of the deceased; therefore, after the parish church, they seek that the funeral rites, even on the third, seventh, thirtieth, and anniversary days, be performed in the churches of the regular clergy. Indeed, if the parish priests are excluded from these funerals for the sake of the rights of the religious orders, their churches, which are already poor and lacking in such revenues, will be reduced to the utmost poverty, so that they will be unable in any way to provide for the divine worship and the care of souls. Nor can it be expected of the faithful that they provide for the needs of the churches from elsewhere, or that they perform funerals elsewhere in the parish churches: for the inhabitants of those towns are very poor, and can scarcely bear the modest expenses of even one funeral. Therefore, the parish priests point out that this is not only a matter of the rights and privileges of positive law, but especially of natural law; for the parish priests are already burdened with many expenses, and are subject to heavier taxes because of the revenues presumed to be derived from the black cassock; and if these revenues should completely fail, with the remaining taxes, the parish priests will have to abandon the churches, unable to bear the expenses and taxes. The parish priest of the town of Rende states a special reason concerning himself, namely, that in the convent of the Friars Minor Observant, there are not three religious present to sing the solemn Mass, but only one regular priest, so that the religious themselves cannot satisfy the pious request of the faithful, at the same time hindering the parish priest from doing so. The parish priest of the place of Pietrafitta notes that he is a newcomer to that town, and that he has no friends, no relatives, and no other connections with the parishioners, so that, lacking ordinary revenues, he can expect nothing extraordinary.

[*Latin ed. p. 108*]

108. RIGHTS OF RELIGIOUS ORDERS. On the other hand, the religious communities of Rende and Pietrafitta primarily agree in upholding the privileges proper to their orders, from which they openly assert that the parish priests have no right to perform funerals in their churches. Furthermore, they note that the parish priests cannot accuse the religious of violating parochial rights, since the present arrangement, made without their consent, was issued by the Municipality. They, however, maintain that, under these circumstances, they are obligated to defend their privileges and rights, which are not personal, but pertain to the order itself, and to which they cannot renounce without the approval of the Holy See. Moreover, they believe that the matter is not worthy of serious controversy, because the Municipal decree is temporary and provisional. However, they

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concede that the parish priests have the complete right to perform their office over the bodies in their own churches and to celebrate any other funeral, provided that they acknowledge that they have no further right to do so. The guardian of the F.F. Minor Observant community of Rende presents particular reasons, stating that he has long tolerated the practice of the parish priests not respecting the rights of the religious, but that in January of the year 1891, upon learning of this, the provincial minister imposed upon him the duty of preventing the parish priests from committing such violations. The guardian, addressing the Archbishop, arranged the matter in such a way that the parish priests would enter their church, carrying the body, and would perform the funeral only in the presence of the body. However, the provincial minister, especially considering a recent decision of the Sacred Congregation for the Eastern Churches and the Regular Canons (which decision is not cited), believed that he should completely deny any entry into these churches to the parish priests. The F.F. Minor Reformate community of Pietrafitta, in their particular case, note that there are five pagan tombs in their church, dating from the origin of the community, and that the privileges of the religious have always been respected, and therefore they consider the new and scandalous demands of the parish priests to be unacceptable. Furthermore, they point out that not only do the religious have the right...

[*Latin ed. p. 109*]

GUSENTINA 109 concerns the matters of funerals to be performed in their churches, but also concerning the care of souls, since, within the town, they themselves exercise pastoral care over the faithful. OBSERVATIONS FROM THE OFFICE OF FAVORE RELIGIOSORUM. It is understood that Religious are to be favored by the law, in cases where they are defending privileges granted to them by common law, and therefore, in court, they have a favorable position and their claims, based on law, are upheld. Therefore, Parish Priests, if they have any rights, must prove them. However, because of the violent suppression of Religious Orders by the Civil Government, Religious are often no longer able to exercise their rights, yet, in this matter, the Regular clergy have always had broad legal protection concerning their rights in general, and concerning the right of burial in particular. For it is established as a fundamental principle in such controversies that any change in the ecclesiastical status of Regular clergy concerning rights, obligations, and privileges pertaining to them, cannot be made except by the authority of the Holy See, as decided in *Per guian* of 18 December 1824, in Fermo, concerning the *Iuris Funerandi* (Law of Burial), of 21 November 1840, in Ravenna, concerning *Funerum* (Funerals), of 17 March 1781, in Tivoli, concerning *Iuris tumulandi* (Law of Burial), of 17 March 1821. But, above all, attention must be paid to the decision given in Forlì, concerning *Iuris funerandi* (Law of Burial), of 17 September 1871.

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In this specific case, a Parish Priest, within whose parish boundaries there was a certain Carmelite church, claimed that the right of burial had ceased, which that church, before its unjust suppression, had enjoyed; because, in fact, although the Carmelite Order no longer existed in that church, but with the following questions proposed: 1. "Does the Carmelite church still enjoy the right of burial, so that its Rector is responsible for performing the funeral rites over the bodies of the deceased in that cemetery?" 2. "And what benefits are due to the Parish Priest in this case?" The Sacred Congregation responded: 1. "Affirmatively, saving the right of the Parish Priest of the domicile of the deceased to a fourth [of the fees]."

[*Latin ed. p. 110*]

410 CUSENTINA funeral, according to the custom of the place; 4d 2. Negative in the special case under consideration. Regarding this, a most wise response established that the right of burial was recognized as a real right belonging to the Church, independent of the rights of the Religious Order, as was also more clearly defined in Ravenna. The funeral, March 17, 1781, by which judgment the right of burial was vindicated for the Church of St. Jerome, although it no longer belonged to the P.P. of the Society of Jesus, suppressed by legitimate authority. When the Church enjoys the right of burial, all benefits accrue to the Church performing the burial, except for the canonical portion due to the parish priest, by which the rights of the parish are sufficiently provided for, as Clement decreed. Concerning burial, chapter. Formerly, § Truly, the Council of Trent, Session 25, on Reform, 13, and also the Sacred Congregation in Pisauren, regarding the fourth funeral, January 26, 1824, in Tiburt; March 17, 1821, to the II Doubt, in Auximana, concerning the right of burial, November 20, 1830, to the II Doubt. Furthermore, since it is certain that certain rights belong only to Religious when they reside in convents under regular discipline, nevertheless, lest affliction be added to the afflicted, the Supreme Pontiff cautioned that it should be avoided that the rights of the Religious be infringed. Indeed, because Innocent X, with his provident Constitution *Instauranda*, suppressed the small Regular convents; and then, with another Constitution, he restored some of these to their former state, subjecting them to the Ordinaries, as delegates of the Apostolic See, until the revenues of these convents could support twelve Religious; so that such dispositions would not excessively harm the convents suppressed by civil authority. The Sacred Penitentiary, after giving instructions dated April 18, 1867, concerning the relations between the Regulars suppressed in Italia and the local Ordinaries, and on the same subject, gave certain legal responses on September 12, 1872. The first of these is as follows: Since the Sacred Penitentiary, in a letter dated April 18, 1867, decreed n. 3 — Regular houses,

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suppressed by civil authority, provided that...

[*Latin ed. p. 111*]

LET THE SUPERIORS, at least three in number, convene there, so that they may deliberate, of whom at least one must be a Priest, and that they shall be subject to the jurisdiction of the Provincial Minister, and that they shall be governed by a Superior specially appointed there: — Question 1. How should the Superiors, Provincial, and Local, act, while the Ordinary of the place wishes to subject the Churches and houses to the Sacred Visitation, and the Regulars who reside there in a number of three, together governing the said Churches and houses of their Order? — And it was answered: To Question 1. The aforementioned Churches and houses, and also the Religious residing there, shall enjoy the same immunity from the jurisdiction of the Ordinary as they previously enjoyed. Therefore, it does not seem lawful to impugn the intention of the Religious in this case, for, by the aforementioned disposition of the Penitentiary, the Innocentian Constitutions, which were lacking in effect, are now rendered valid against the suppression of the Regulars. IN FAVOR OF PARISH PRIESTS. And first, concerning the deductions made from the Regulars, it should be noted that neither the Parish Priest nor the Ordinary can compel the faithful, nor even excessively urge them, to perform funeral rites in parochial churches. Since associating the body beforehand with the parochial church involves greater expenses, and afterwards, when burial of the body is requested in the churches of the Regulars, it is entirely in conformity with the intention of Canon Law that the funeral rites be performed there, as unanimously teach the Doctors, and as Cl. Santi, Praelec. Jur. Can. 'Lit. de Sepulturis' n. 6, points out. Nor does it matter that the decree of the Municipality is precarious, for here the matter concerns the settling of rights, deciding what is more fitting in the case; indeed, it could be noted that such a decree greatly exceeds the limits of the privilege granted to the Regulars with regard to funerals, since Canon Law permits the faithful to choose burial among the Regulars: and the decree of the Municipality is rather a subversion of Canon Law, compelling the faithful to accept burial among the Regulars. But this question is directly addressed by the aforementioned Constitutions of Innocent X, the force of which, therefore, must be diligently considered in this case.

[*Latin ed. p. 112*]

112. The matter concerning CUSENTINA must be considered. The Monastic Formulas, *Formularum Legum Ecclesiasticarum*, part 2, Title 13, formula 1, number 70, referring to the decrees of the Holy City and the Holy See of the Congregation for Reform, dated 1703, concerning the twentieth question, states: "The twentieth decree is entirely juridical, because, as is clearly taught by Medie, *De Sepult*, question 10, number

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1; and the Rota, in a decision before Coccino, number 1213, number 2, it follows that the right to bury one's parishioners is among the parochial rights; and therefore, the right to perform the funeral service over the bodies also belongs to the parish priest, as a connected and dependent privilege: Samuel, *De Sepult*, disputation 3, chapter 2, number 19, and chapter 7, number 46... and not only in regular churches within the parish boundaries, but also in the regular houses of those congregations which, by the authority of the Constitution of Innocent X, §§ *Bullarium IV*, which begins: 'As small houses are subject to the jurisdiction of the Ordinary,' I say, in these, not the regular houses, but the parish priest to whom they belong, must perform the funeral service over the bodies, as observed by Romaguer, *Ad Synod. Qerund.*, book 3, volume 9, chapter 3, number 22." Therefore, the intention of the Pope must be considered, who, in subjecting small houses to the jurisdiction of the Ordinary, or even in suppressing them, did not have as his reason the cause of the poverty or inadequacy of these houses, so that he might pity their condition, but rather, considering that the regular discipline could not be observed in such houses, and that great privileges granted to a few religious were more likely to lead to ruin than to the edification of the Church of Christ, he decreed that houses founded before the decrees concerning the celebration of Masses, issued by the Holy Congregation of Councils on June 21, 1625, and approved by Urban VIII, if they did not have twelve religious, should be subject to the jurisdiction of the Bishop concerning not only ecclesiastical discipline, but also the regular institute. However, the Supreme Pontiff, in the Decree *Ut in parvis*, restored some houses that had previously been suppressed by the Constitution *Instauranda*, under the condition that, if they had at least six religious, they should be subject to the jurisdiction of the Ordinary, both concerning ecclesiastical discipline and concerning the regular institute, as the Holy See restored.

[*Latin ed. p. 113*]

CUSENTINA 113 Regarding the Statute of the Regular Canons, under the date of July 27, 1626. The convents, established after the aforementioned decrees, if they do not have twelve Religious, are certainly subject to the jurisdiction of the Bishop, but only concerning ecclesiastical discipline, and not concerning the Regular Institute itself. For in the two former cases, the Ordinary can exercise the power delegated to him by the Holy See; in the latter case, he exercises his own ordinary power; thus, Pignat. Constat. Can. Vol. 2, consult 136, n. 24, and Dei Bene De Immunit. p. 2, c. 24, dub. 21, n. 5, and Ferrari, Bibliot. Can. art. 2, under the word "Conventus." Therefore, whether it was Urban VIII or Innocent X, they sufficiently made known their intention, namely, that convents with a very small number of Regular Canons should be subject to the Ordinaries. And elsewhere, Clement VIII, Gregory XV, Urban VIII, and Innocent X, in their respective

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Constitutions concerning the erection of new convents, taught the same. Now, what modern discipline has introduced must be considered. The Sacred Penitentiary, in the Instruction of April 18, 1867, and in the related legal pronouncements of September 12, 1872, sought, as far as possible, to protect religious communities that had been unjustly and violently suppressed, and therefore, while Innocent X had declared that a religious community should consist of at least six Religious, of whom four should be priests, the Sacred Penitentiary, considering the different circumstances, established in the aforementioned Instruction, n. 3: "That houses of Regular Canons, which have been civilly suppressed, provided that at least three Regular Canons reside there, of whom at least one should be a priest, shall be subject to the jurisdiction of the Provincial Minister; and that a particular Superior should be established there to govern them." Thus, the Penitentiary granted the possibility of constituting a religious community with three Regular Canons, of whom one should be a priest. Consequently, this community is subject to its Superior with regard to regular discipline; but with regard to external ecclesiastical discipline, such small convents seem to remain subject to the Ordinary of the place. This change made by the Penitentiary Instruction...

[*Latin ed. p. 114*]

114. The rule of the CUSENTINA order stipulates that in such small communities, concerning regular discipline, they are subject to the private jurisdiction of the superior of their order; whereas, previously, by the decrees of Innocent X, they were also subject, concerning regular discipline, to the cumulative jurisdiction of the local Ordinary and the superior of their order, as demonstrated by Fagnanus in his Commentary on chapter 7 of "De Officiis Ordinis," citing the authentic resolution of the Holy Congregation concerning the status of religious orders. However, common law is not abrogated by subsequent provisions, unless it is incompatible with them. Therefore, the Holy Congregation, on August 23, 1873, in response to a brief question, namely: "In a certain town within the same diocese, there exists a small community under the title of Saint Restituta, Virgin and Martyr, which, since its founding in the year 1602, has always consisted of three religious, of whom two are priests. The Bishop asks whether it is permissible for the Diocesan Bishop, by virtue of the Decree — Ut in parvis — of February 10, 1654, to visit such a community, its church, and the religious residing there; the response was: 'To question 3, affirmative.' It is also worth noting that in the town of Rende, there are not three religious in the community, but one priest and one lay brother; and from the records, nothing is known about the town of Petrafitta. Furthermore, the Holy Congregation has always sought to determine the amount, quality, and rights concerning funeral services performed on the third, seventh, or thirtieth day, from the legitimate customs of the place, as decided in

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the aforementioned cases of Bergulana, Tiburtina, and Forolioien. With all these observations in mind, the following questions have been raised to clarify Doubt 1: Does the right to recite the office, to grant absolution over the bodies of the faithful, and to celebrate Masses in the churches of the Franciscans, in the public cemetery, belong to the religious, or rather to the parish priests, in this case?

[*Latin ed. p. 115*]

GUSENTINA 115 And in order to obtain the favorable opinion of the pastors. II. Whether the same funeral rites pertain to the third, seventh, thirtieth days, and anniversaries, in this case. RESOLUTION. The Sacred Office of the Holy Council, after deliberation on February 2, 1894, decided to respond: To the Bishop who proposes a concordat, the consent of the parties must be obtained. PROCEEDINGS. On February 24 of the current year, in this controversy, the following questions were proposed: "I. Whether the right to recite the office over the bodies of the faithful, to grant absolution, and to celebrate Masses in the churches of the Franciscans, which are attached to the public cemetery, pertains to the Regulars or rather to the Parishes, in this case." And in order to obtain the favorable opinion of the pastors: "II. Whether the same funeral rites pertain to the third, seventh, thirtieth days, and anniversaries, in this case"; to which it was decided to respond: "To the Bishop who proposes a concordat, the consent of the parties must be obtained." The Bishop, acting according to these instructions, attempted to reconcile the parties, but without success, as he reports, saying: "I have tried to lead the parties to a concordat; but in vain. For the Provincial Father, whom I consulted, gave me this response: The faithful who reside in places where the churches of Religious are served, can freely perform funeral rites in the parish churches; but if the faithful prefer the churches of the Religious, these cannot yield their privileges or rights to the contrary." With these observations, the questions were re-proposed for clarification: I. Whether the right to recite the office over the bodies of the faithful, to grant absolution, and to celebrate Masses in the churches of the Franciscans, which are attached to the public cemetery, pertains to the Regulars or rather to the Parishes, in this case. And in order to obtain the favorable opinion of the pastors. II. Whether the same funeral rites pertain to the third, seventh, thirtieth days, and anniversaries, in this case.

[*Latin ed. p. 116*]

416. ARGUMENTUM RESOLUTUM. Sacra Congregatio, post deliberationem sub die 14 Iulii 1894, respondit: "Cum iure regularium maneat celebrandi officium funebre super cadaveribus defunctorum, et cum sepulcrum gentilitium in Ecclesia regularium habeatur, et eorum qui sepulchrum ibi elegerint; de reliquis, placere est concordia, inter quindecim dies ineunda, praesentibus perdurantibus circumstantiis,

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valitura; quo termino inutiliter elapso, Archiepiscopus schema concordiae cito conficiat et ad Sacram Congregationem transmittat." MEDIOLANUM. MATRIMONIA. Die 12 Maii 1894. Sessio 24, cap. 5 De Reformatione Matrimoniorum. SUMMARIUM CAUSAE. Die 16 Decembris anni proxime elapsi, proposita fuit causa nullitatis matrimonii inter Adelaidam Rivolta et Antonium Belloni, in Archidioecesi Mediolanensi, et disceptatum est dubium: "An constet de matrimonii nullitate in casu hoc?" Responsum proditum est: "Non satis constare" (1). Cum autem haec decisio non placebat actrici, preces Tribunalui ecclesiastico mediolanensi obtulit, ut dispensationem a matrimonio rato et non consummato obtinere posset. Curia Archiepiscopalis tunc novo interrogatorio actricem subiecit, et curavit ut eius corpus a medico, ad hoc delegato, inspiceretur, qui in scripta relatione et in iudiciali examine affirmavit, mulierem numquam sustinuisse coitum coniugale. Mulier vero, sub novo examine, respondit: se confirmare depositiones, quoad hoc, alias in iudiciali examine peractas; nempe quod numquam habuit cum viro perfectam coniunctionem carnalem, ita ut si hymen aliquod detrimentum passus sit, id evenit digito viri, minime vero ex congressu matrimoniali. (1) Relatum est in Vol. XXVI, 470.

[*Latin ed. p. 117*]

MILAN. Disputation 117. SYNOPTIC OBSERVATIONS OF THE DEFENDER OF MATRIMONY EX OFFICIO. The cause concerning the marriage between Adelaide Rivolta and Anthony Belloni, initiated on September 12th of the year 1889, is being re-examined. The reasons, by which the spouses claimed the marriage to be invalid due to the husband's impotence, were presented in general assembly on December 16th of the recently elapsed year, and the Most Reverend Senate wisely responded to the question "Does the nullity of the marriage exist?" with: "It does not exist." Today, they resort to the extraordinary remedy of a dispensation, but with no better outcome. For the physical virginity of Adelaide, which usually serves as an argument in such judgments, rests on a very weak foundation in the present case. Indeed, only one physician examined Adelaide's body. Truly, one witness, no witness. Nor has any of the most holy laws been observed, which, in this most difficult matter, could best serve to obtain the truth and to avoid deceptions and collusions. No bath was used, nor was an honest matron present. Despite these circumstances, it is declared that the hymen is not entirely intact; concerning this distinction, the accuser blames the husband's finger. But it is easier to sing such songs than to persuade. Nor am I moved by the examining physician, when he says: "When a regular coitus occurs, a trace remains that no one can deny." Such a trace was not found in the woman's body. For the traces of a rupture must be absolutely irreparable, and not slight, which, after a period of four years that have elapsed since

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the separation of conjugal life, cannot be repaired, nor can they be denied by the examining physician without a bath. Nor does the physician, from a distance, indicate any signs by which the traces of a rupture can be distinguished from the traces of a finger. With these observations, it was proposed to demonstrate...

[*Latin ed. p. 118*]

118. MILAN. Whether it is permissible for the Most Holy Congregation to grant a dispensation from a marriage that is valid but not consummated in a certain case? RESOLUTION. The Sacred Congregation, after deliberation on May 1, 1894, concerning this matter, decided to respond: Considering the circumstances presented in the process concerning the nullity [of the marriage], the answer is affirmative, provided that the man does not proceed to another marriage without the consent of the Holy Congregation.

ROMAN. DOUBT OF THE PREPOSITORATE OF A CHAPTER. July 14, 1894. Through summary petitions. SUMMARY OF THE FACTS. The Most Reverend and Reverend Lord S. C. of the Congregation for the Propagation of the Faith, from the Secretariat, transmitted the following doubt to the Sacred Congregation, which was proposed by the Archbishop of Saint Andrews and Edinburgh in Scotia, as follows: "A controversy has arisen in the Chapter of our Cathedral Church concerning the right that the Prepositor, when the See is vacant, has to intervene in the functions of the Cathedral Church, which the Bishop himself ought to perform while he lives, for example, on Fridays and Saturdays and on Saturdays of the Greater Week. The Prepositor claimed this right for himself, but the Cathedral Administrator denied it; and the other Canons were divided in their opinions. It therefore seems advisable to establish a certain and legitimately sanctioned rule, so that there may no longer be room for such disputes. "The difficulty arises from the fact that Cathedral Chapters among us, due to our special circumstances, are constituted in an extraordinary and exceptional manner; hence, the doubt can easily arise as to whether, in certain circumstances, the right of the Ordinaries retains its force, or rather, whether a different course of action should follow from the different constitution of the Chapter."

[*Latin ed. p. 119*]

ROMANA 119 "In hac questione, sicut mihi notum est, nova et satis difficili, non ausim decisionem proponere; sed exponam sententiam ad quam, re perpensa, adductus sum. Haec sunt quae sentio de casu supra exposito: "Canonici iure ordinario tenentur: I. Ad residentiam. II. Ad officium divinum in Cathedrali quotidie persolvendum. "Apud nos vero: I. Canonici non resident prope Cathedralem; hoc enim fieri non potest; sed adscripti sunt variis per totam Dioecesim Ecclesiis, curam animarum adnexam habentibus. II. Haec adscriptio Ecclesiis aliis cum

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cura animarum componi non potest cum quotidiano officio in Cathedrali persolvendo. Quapropter per Rescriptum S. C. de Propaganda Fide die 21 Martii 1886 a S. Sede Capitulo Metropolitano indultum est: I. Ut semel tantum in quolibet mense conventum agere teneatur. 2°. Ut recitatio Horae Tertiae ante missam solemnem pro officio chorali sufficiat. "Hinc videtur colligendum: 1°. Obligationi residendi substitutam fuisse obligationem propriis missionibus inserviendi. 2°. Canonicorum cum Cathedrali connexionem non amplius subsistere, nisi quatenus debeant semel in mense ibi convenire, et si quando debeant forte Episcopo solemniter celebranti assistentiam praebere. 3°. Extra hos casus officia divina in Cathedrali velut quasi parochialia habenda esse, et ad Praepositum aliosve de Capitulo (excepto Administratore Cathedralis) nullo modo pertinere eis interesse." Rescriptum dispensationis, cui innititur Archiepiscopi quaestio, est sequentis tenoris: "Decreto S. C. de Propaganda Fide dato die 21 Apr. 1852 exempti fuerunt Canonici in Anglia ab onere residentiae penes Cathedralem, et sacri officii persolvendi, ita tamen ut in Synodo provinciali Episcopi curarent de nonnullis diebus designandis, in quibus Canonici Chorum adire atque officia peragere tenerentur. In Synodo autem Westmonasteriensi prima statutum fuit quod singuli Canonici quolibet mense convenirent ad Ecclesiam Cathedralem, et recitarent psallendo Tertiam officii currentis, et deinde assisterent Missae solemni."

[*Latin ed. p. 120*]

120 ROMANA: "The Archbishop of St. Andrews and Edinburgh humbly requests that, considering the circumstances, which are similar in both Scotland and England, the Metropolitan Chapter be: 1° Obligated to hold a meeting only once a month; 2° That the recitation of Terce before the solemn Mass suffices for the choral office." "From an audience granted by His Holiness on March 21, 1886, His Most Holy Lord Leo, by Divine Providence, Pope XIII, having heard me, the undersigned Archbishop of Tyre, Secretary of the Sacred Congregation for the Propagation of the Faith, graciously approved, for the sake of expediency, all that was requested."

o Discussion: As the Archbishop indicates, the question is a new one, and its solution can therefore only be found by resorting to general principles of common law. Indeed, it is certain that, in the present case, the Chapter of the Cathedral Church continues to exist, and has not been dissolved, although the obligation to reside there has been almost entirely relaxed, with only the burden remaining that "the Metropolitan Chapter be obligated to hold a meeting only once a month, etc." However, it cannot be understood how the dispensation from the obligations of the Chapters can be granted, if the Chapter itself does not continue to exist. If the Chapter remains, then the dispensation from its obligations is odious and subject to a strict interpretation; for it is a wound to common law, as all canonists commonly explain. The common law on this point is very well established.

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Indeed, in the cases of Novara on July 8, 1724, and Milan on April 26, 1723, when it was asked whether the Prelate of the Chapter, in the absence of a seat, as belonging to the highest dignity, should perform the functions in question in this case; the answer was affirmative, in favor of the Prelate. Therefore, the parish priest or the administrator of the cathedral does not seem to be able to exclusively claim the performance of these functions in this case, because the right of the Chapter prevails; and this right is not prohibited by any rescript of dispensation.

o But, on the contrary, if we wish to adhere more to the spirit of the particular dispensation than to its letter, it seems rather appropriate to...

[*Latin ed. p. 121*]

ROMANA 121: The opinion of the Archbishop is to be given. For in this case, for each canon, the personal and laborious obligation of residence at the Cathedral, by the benevolence of the Pontiff, was changed into the obligation of residing in the respective Churches of the Missions, as if they were Parishes; therefore, the obligation of reciting the canonical hours daily in the choir was replaced by the pastoral office, with the sole exception that they must attend once a month for the celebration of the conventual Mass, as has already been said, because the Chapter remains extant. Since the canons could not, at their own will, abandon the Churches they had accepted, preferring to leave the canonical office rather than the care of souls; it seems incongruous that they should abandon their flock during the Major Week, depriving them of the nourishment of the Sacred Functions, when the Church invites and urges them to these very things. Furthermore, the Provisor does not seem to be able to arrogate to himself the right of performing these sacred functions in the Cathedral Church, which is the head of the Chapter, unless the Chapter members are present or the Chapter meeting is being held. Consequently, not only would the Provisor be distracted from his pastoral office, but also each and all of the canons. Therefore, it seems that the intention of the Pontiff in granting the dispensation from canonical residence was that each canon residing in the Churches of the Missions should primarily and principally serve in the pastoral ministry, or in substitution for the canonical office. However, from the report of the Archbishop, it seems to be inferred that the canons assist the Archbishop in solemnly celebrating; whether this also occurs during the Major Week, and on other more solemn days of the year, is not sufficiently clear. With these considerations, the question arises as to what should be answered in prayer.

RESOLUTION: The Sacred Congregation, after deliberation on the matter under the date of July 1, 1894, decided to respond: "Considering the pontifical indult, the proposed functions, in the absence of the Chapter,

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can be duly performed by the administrator of the Cathedral."

[*Latin ed. p. 122*]

122 ABULENSIS. A REQUEST CONCERNING ASSISTANT PARISH PRIESTS. July 14, 1894. Through summary petitions. A SUMMARY OF THE MATTER. In the report on the status of the Church of Abulensis, presented to the Sacred Congregation on December 11th, the following request is found at the beginning: "A considerable and not insignificant difficulty arises in the administration of this diocese, which is composed of so many and such a large number of towns, due to the absolute and permanent immovability of the parish priests. For, indeed, their ministry, often and for various reasons, which sometimes can only be judged from the immediate circumstances, not only does not benefit the spiritual progress of the people, but it even serves as an offense to them and causes harm. The means by which the Bishop can remedy these evils, or even those which belong to him according to the Council of Trent, Session XXI, Chapter VI, on Reform, do not always seem effective in achieving this. Sometimes it is a matter of temporarily removing a parish priest, not because he is uneducated or unskilled, nor because he lives scandalously, but because, whether due to the stubbornness of the people, or due to financial difficulties, or due to some characteristic, temperament, or even manner of acting of the priest himself, it happens that a priest who uselessly and fruitlessly exercises his ministry in one place, could serve the salvation of souls in another place. Furthermore, since, according to the aforementioned chapter of Trent, the Bishop cannot dispense a parish priest from his residence, but can only provide him with an assistant, more serious inconveniences result from his presence in the parish, from which, undoubtedly, he ought to be absent; and it often happens that if the parish priest remains in the same place as the assistant, the assistance provided by the latter is more laborious, if not completely useless and superfluous. "Moreover, it must not be overlooked that the greatest difficulties and continuous delays are now arising, with the prospect of irreparable loss of time..."

[*Latin ed. p. 123*]

ABULENSIS. 123. In the process of canonical instruction, which is deemed necessary for correction and punishment, as mentioned in the praised chapter, the desired remedy is either long delayed or applied only after very grave harm to souls. Therefore, having often experienced these difficulties, the Bishop Relator humbly requests this Holy Congregation to grant him, for the time being and under conditions that seem appropriate, the powers he seeks, in order to find a remedy for these problems.

"1. To appoint Coadjutors, according to the aforementioned Decree of Trent, for the Parishes mentioned therein, and to grant them dispensation

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from their residence, and to transfer them to another Diocese, until they are again examined and approved, and until a suitable judgment is defined after a canonical process concerning their conduct.

"2. To again appoint Coadjutors, according to the aforementioned Decree, after a preliminary and informative process conducted by the Episcopal Chancery; to grant the Parishes mentioned in the second paragraph of this request dispensation from their residence, and to appoint them as vicars of other parishes, or in other suitable ministries, for the time that the reasons motivating this dispensation and separation persist.

"The Abulensis Bishop's proposal concerns the granting to him, in addition to common law, of extraordinary powers to temporarily remove Parishes from those who exercise a less useful ministry in their own Church, without proceeding to the deprivation of the benefice according to the procedures of the Council of Trent.

"The perpetuity of benefices, even in a subjective sense, has been more and more firmly established by Decretal law; but prudent laws have been enacted to prevent this from resulting in the destruction of ecclesiastical discipline. Hence, in the title *De Translatione Episcopi*, it is decreed that the Pope can transfer Bishops from one Church to another."

[*Latin ed. p. 124*]

124 ABULEN. For reasons sufficiently grave, as the Interpreters of Canon Law widely explain, noting that this provision, with due proportion, also applies to parishes concerning Bishops. Specifically, the chapter entitled "De Rerum Permutatione" [Concerning the Exchange of Things] is invoked, with the following wording: "It is asked on your part whether exchanges can be made of benefices, when the exchange of dignities was forbidden in the Council of Turonensi [Tours]: (and below) Therefore, generally, you must understand that exchanges of benefices cannot, in law, be made, especially with a prior agreement, which always contains a flaw of simony concerning spiritual matters or those connected to spiritual matters. However, if the Bishop investigates a necessary reason, he can lawfully transfer a person from one place to another; so that those who are less useful in one place may be able to exercise themselves more usefully elsewhere." Throughout, Commentators, along with Gonzales, note that this does not concern the transfer of someone unwillingly, with a prior deprivation of the previous benefice, but rather the transfer of someone who, either spontaneously or at the suggestion or command of the Ordinary, requests or consents to be transferred to another Church. However, on the occasion of this chapter, Doctors teach that Bishops do not lack the means by which they can make beneficiaries who are unwilling to do so. For although beneficiaries cannot be deprived of their benefice, except for reasons prescribed by law, and with due process observed; nevertheless, when those same individuals, resisting the will, commands,

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or counsel of their Superior, cause scandal to the faithful and are not for the edification but for the destruction of the Church of Christ, then those cases are worthy of the deprivation of the benefice. Besides others, such as Fagnanus and Reiffenstuel, Flaminius Parisius discusses this matter in his celebrated work on the Resignation of Benefices, book 3, question 18, and elsewhere. But as is evident, it is better that the prudent Bishop beforehand influence the will of the beneficiary, so that he spontaneously seeks another Church where he can better exercise himself. Therefore, the Sacred Congregation [Sacra Congregatio] in Eystetten, on August 11th and September 22nd, 1742, confirmed the Bishop's judgment, who, because of the reasons for the priest's actions, which offended and scandalized the people, ordered him to consider exchanging parishes within a certain time, otherwise, he would, by his office, have to effect the exchange. Kosso.

[*Latin ed. p. 125*]

ABULEN. 125. The Sacred Congregation of the Council [S. C. C.] decreed that a substitution [permutationem] must be made with an equivalent revenue. Furthermore, although the Council of Trent, in Session 21, Chapter 13, desires that each parish have its own perpetual and particular pastor, yet in Session 21, Chapter 6, it establishes how coadjutors can be assigned to them. The pastors are not dispensed from residence. Concerning residence, in Session 23, Chapter 1, it decrees that pastors "shall be granted leave in writing and freely for a period of more than two months, unless they do not obtain it for a serious reason." Therefore, the Bishop can grant a license to be absent even for more than two months, for example, due to illness, provided that he does not grant such a long period of time that it appears as though he has dispensed them from residence. Finally, since the Bishop laments the excessively long and solemn canonical process in cases of deprivation and similar penalties, it is permissible to note that the Sacred Congregation of Extraordinary and Regular Affairs [S. C. E E . et R R.] on June 11, 1880, prescribed a form for the economic process for disciplinary causes of clerics, which is very suitable for the current conditions of the courts, as is already frequently used in Italia and Gallia (1). But the degrees of penalties and the process, which are ordered by common law, are those that allow the Bishops to deprive their pastor of his benefice for one year: a time, for the gravity of the matter, which is certainly not too long. With these things stated, the question was asked as to how the prayers should be dismissed.

RESOLUTION. After deliberation, the Sacred Congregation on July 14, 1894, decided to respond: "To the Bishop, it will seem fitting."

(1) *Kecole Vc*L XIII, 324.

[*Latin ed. p. 126*]

126 FROM THE SACRED CONGREGATION OF BISHOPS AND REGU-

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LAR CANONS OF ROMA concerning pensions, dated March 9, 1894. The Chapter of the Patriarchal Basilica of the Vatican explained the following on February 18th: Before the conversion of assets, carried out by the Council for the Liquidation of Church Assets, the Chapter's revenues consisted largely of payments for the lease of large estates, which the tenants paid according to an agreement, such that each month the Chapter received one-twelfth of the annual payment: this payment served to meet the monthly installments due to the Chapter, the satisfaction of patrimonial obligations, and the expenses of the Basilica; and since some amount still remained, a special distribution was made quarterly among the members of the Chapter. But after the law concerning the conversion of assets, things changed: the Chapter's revenues were converted into government bonds and into fees for lands granted in perpetuity (emphyteusis), with the payment of the fruits being deferred for the first six months and the fees for one year. Then, in order to maintain the same system of payments as before, the Chapter obtained advances from the monthly installments on the annual revenue of the government bonds and on the fees, and thus, it paid the monthly and quarterly distributions and other expenses during the first nine months of the year, and it met the payments for the fees due in September, along with the distributions and other expenses of the last quarter. But most recently, either due to the ruin suffered by two of the principal credit institutions of Rome, or due to the delay of the tenants in paying the fees, or for other reasons, it became necessary to introduce a change in the method of paying the distributions to the Chapter. Hence, by a resolution of the Chapter dated January 21st, the following summary of the agreement was made.

[*Latin ed. p. 127*]

In ROMA, it was agreed upon in a harmonious manner that the monthly distributions and the expenses of the entire year, along with the annual revenue of public debts, would be sufficient, with the anticipation, as before, being taken; and that quarterly distributions would be made in March, June, and September, along with what remained from the aforementioned revenue. However, if the real revenues from the canons were collected, without any anticipation, two further distributions would be made, namely one at the end of the last quarter and another at the end of the following February. This new method, while on the one hand placing the administration of the Chapter on a better and healthier path, on the other hand caused a loss to the Chapter members: because, while the first three quarterly distributions were reduced, they were left insufficient to pay the pensions, imposed upon their benefices, the days for which arrived and passed in the months of March, June, and September, and the sum of which exceeded the amount of the distribution. With these things stated, the Chapter members requested a period of grace from the Sacred Congregation for the payment

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of the pensions, namely, that the pensions which were to be paid according to the Bulls on the days of June 24th and 25th, could be paid on September 8th of the following year, and that those which were to mature on the days of September 8th and December 24th, would be delayed until February 28th of the following year. Considering the gravity of the matter, the requests were sent to the plenary session of the Most Eminent and Reverend Fathers; and in the meantime, these things were noted by the Advocate Summista, by order. Almost all ecclesiastical benefices, burdened with pensions, are in the same condition regarding the maturity of the canons and the revenue of public debts: hence, if the requested grace is granted to the Chapter of the Vatican, whose benefices are richer than those of others, it ought to be granted to other Chapters with greater reason, and thus the way would be opened to continuous appeals. Then, the petition of the Chapters tended to deprive the pensioners of the right already acquired: for scarcely has the day appointed, according to the Bulls, for the payment of the pension arrived, than the pensioner immediately and without delay has the right to demand it, and the payment cannot be delayed without causing them grave injustice.

[*Latin ed. p. 128*]

Finally, it was noted that in this case, the matter concerned not a diminution of income, but a simple extension of the payment deadline, which the Clergy and beneficiaries of the Basilica Vaticanae are better able to bear with less expense than the pensioners; therefore, there is no reason to deviate from the common and ordinary procedure. After these matters were brought to examination, a *Resolution* was issued regarding the question: "Whether the requested extension of the pension payment should be granted." The Holy Congregation of Bishops and Regular Canons, on March 9, 1894, decided to respond with: "NEGATIVE." In the *EX S. CONGR. R. ET U. INQUISITIONIS* regarding a marriage to be entered into by a woman to whom both ovaries and the uterus have been removed. On July 30, 1890, the following letter was sent to the Bishop of Regiae, containing the solution to the question proposed by him to the Holy Inquisition.

Most Reverend Lord,

In the Congregation held on the fourth day of the current month, the 23rd, the question proposed by Your Eminence in a letter dated October 31 of the previous year was discussed, namely: Whether the woman N. N. ..., to whom both ovaries and the uterus have been removed by surgical operation, may be admitted to enter into marriage. And after mature deliberation, the Eminent Cardinals, together with the General Inquisitors, decreed: "Marriage should not be prohibited." Which I signify to Your Eminence as the norm of this Congregation; and I pray for all good things from the Lord.

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To Your Eminence,
Rome, July 30, 1890.
Most devoted in the Lord,
R. Card. MONACO.

[*Latin ed. p. 129*]

129 FROM THE HOLY CONGREGATION OF THE ROMAN COUNCIL'S DECREES. April 14, 1894. SUMMARY OF THE CASE. In the distinguished collegiate church of Saint Angel in the Forum of Fishes in ROMANA, the Reverend D. Stella, one of the canons, who held the office of Chamberlain of the Sacristy since the year 1883, in a sign of his devotion to the Church and to his brethren, enriched it with numerous furnishings, the list of which is compiled from a certain act of the chapter. His brethren, the defendants in this cause, contend that this generous intention was fulfilled, and that the complete transfer of ownership of these items took place, based primarily on two facts. First, the main altar, which was not suitable with the new candelabra purchased by the canon Stella, was adapted and brought to a more suitable form. Second, they adduce evidence from the act of the chapter concerning the acceptance of gifts and the expression of thanks, held on March 15, 1885. However, because afterwards the canon Stella, due to certain arising disagreements, alienated himself from his brethren, in the year 1892, although still the Chamberlain of the Sacristy, he did not use the furnishings that he had generously provided for the feast of Saint Michaelis. In the following year, 1893, another canon was appointed to the office of Chamberlain, who, however, was unable to obtain the keys to the armoire containing these furnishings. Nevertheless, he and the other canons, hoping that D. Stella would resolve the matter amicably and justly, initially did not wish to press the matter too strongly; but when the feast of Saint Michaelis approached, and the canon Stella did not abandon his position, they then turned to the Reverend Vicar of the City, hoping that he would persuade the esteemed canon to adopt better intentions. Acts, Volume XXVII, page OOCXV, 9.

[*Latin ed. p. 130*]

130 In ROMA, moved by purely pastoral concern for the city, the Urban Vice-gerent took some steps to bring D. Stella to a sounder state of mind, but without success. Indeed, while he was holding a meeting with the secretary of the Vicariate, intending to explore every avenue of reconciliation, on the day before this, the Canon of Stella secretly removed certain disputed items from the sacristy of the church of S. Michaelis. Upon learning of this, the Chamberlain immediately presented a protest to the Urban Vicegerent. However, the Urban Vice-gerent referred the judicial handling of this matter to the Sacred Congregation of Councils, instructing both parties, by letter dated February 21, 1894, to present their respective arguments.

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The Canon of Stella responded, stating that he had exercised his right of ownership in removing the items, which he had not yet donated to the church of S. Michaelis, and that he offered no further arguments to the Sacred Congregation, claiming full and absolute ownership over those items. He then argued that the plaintiff had acquired no right in the disputed items, since the items themselves, then the sacristy Chamberlain, and the owner of these items, had granted them to the church for use, under his own supervision. On the other hand, the Chapter of S. Angeli insists that it is acting not as a plaintiff, but in a possessory action in this judicial proceeding. The Synoptic Disputation requires a review of the doctrine of Canon Law on the matter of dispossession, which is a doctrine that can rightly be called canonical law, as it repeats its perfection from the institutions of Canon Law. In Roman Law, fundamental principles on this matter had already been promulgated, namely: "possession has nothing in common with ownership," and another saying: "possession pertains to fact, not to law"; nevertheless, the legal protection of possession against dispossession was more strictly limited by the famous injunction "Unde vi."

[*Latin ed. p. 131*]

ROME. 131 The canon law, in order to counteract any violent disturbance of possessors, in Canon 3 of *Redintegranda*, chapter 3, question 1, made an exception to the rule against spoliation, granting protection against the spoliator; thus, a new principle of social justice arose from that very principle: "He who has been spoliated must be restored before all others." Therefore, as expressly taught in Chapter 1 of *De Ord. Cognit.*, before the spoliated party is heard in his petition, he must fully purge the spoliation. Furthermore, in chapter 5 of *De Restit. Spoliaturum*, the following words are found from Alexander III: "Regarding this question, namely, when someone claims to have been violently ejected from possession, and the adversary claims that he was not canonically instituted, we must first consider the violent ejection, before considering the canonical institution; because even the thief, according to the strictness of the law, must be restored." In this case, the Chapter asserts that it had full possession of these items, as can be seen from the facts presented, by which the ownership itself can be proven; but, furthermore, to prove this fact, it presents a sworn testimony of witnesses. Having faithfully presented the facts, the purpose was to resolve the doubt regarding whether and how to respond to the petition of the Chapter of Saint Angel in Foro Piscium in this case. RESOLUTION. The Sacred Congregation, having considered the matter on April 1, 1894, decided to respond: "Affirmatively in all respects, according to the petition and more."

[*Latin ed. p. 132*]

132 CONCERNING THE PRIVATION OF A PARISH OFFICE. May 6th,

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September 9th, 1893, and June 16th, 1894. Session 21, chapter 6, Concerning Reforms. Far from the city of Vaux, there exists a certain village or rural parish of seven hundred inhabitants, named Casal Dingli. The pastor of this parish was, some years ago, named Father Joseph Rizzo, whose removal is now being considered. For, having with him two women still in the prime of life, Mary Fenech and Agatha Ávila, who served him, and preferring their families and children above others, the people began to suspect the pastor's integrity, and especially in recent years, they murmured about his conduct in the church. These rumors grew so much that the Bishop, moved by the gravity of the matter, first warned the pastor several times; and then, when the scandals and complaints persisted, on November 17th, 1891, he suspended the same pastor from office for a time, and, entrusting the care of the parish in the meantime to the priest Francis Muscat, he decreed that a summary investigation of the facts should be carried out, even according to the pastor's own wishes. While this investigation was being conducted, Father Rizzo, having somewhat changed his opinion, petitioned the Bishop to interrupt the ongoing proceedings and to restore him to the parish, promising that in the future he would be better, and that he would no longer receive the two servants into his house; otherwise, he would be permanently removed from his office. The Bishop granted his request; but when the pastor returned to his people, he does not seem to have adhered to the Bishop's instructions, and therefore, on May 12th of the same year, 1892, he was summoned again to the Bishop's tribunal, and after a process that was begun and properly completed, on November 18th, the pastor was deprived of his benefice with the following words: "We declare and pronounce..."

COMPENDIUM OF FACTS.

[*Latin ed. p. 133*]

MELELEANA 133: Rizzo having manifestly violated the promise he had made, according to the terms of the accusation brought against him by the Public Prosecutor, and therefore being permanently suspended from the care of souls of the parish of Dingli, as we hereby permanently suspend him and declare him to be suspended, depriving him of all administration of goods pertaining in any way to said care, saving the right to request a suitable pension from the revenues and proceeds of the parochial benefice. From this sentence, the priest Rizzo duly appealed on November 23rd of the year 1892. The Bishop, having been informed of the matter, in his letter cautioned that, if the Sacred Congregation should deem it necessary to grant a pension to the appellant, according to the judgment of the court, it ought to be a modest one: for the parish is poor.

SYNOPTIC DISCUSSION: DEFENSE OF THE PAROCHIAL PRIEST.

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The plaintiff's advocate argued that, from the documents presented, it does not follow that the priest Rizzo failed to keep his promises, but rather that they support him. Indeed, as we read in dec. 354, no. 23, cor. Olivatio, and in dec. 509, no. 12, cor. Eodem, witnesses, especially in matters of great importance and most of all in criminal cases, must be honest and of known integrity; enemies, the scandalous, the vile, and those suspected of corruption are to be rejected. Pignat., vol. X, consult. 44, no. 21. Furthermore, who the inhabitants of the town of Casal Dingli are, and what their particular behavior has been with other parish priests, is clearly evident from a document found by Rizzo himself in the parish archives, in which it is stated that the people of this town are to be avoided because of the constant persecution of the parish priests. Indeed, the priest Rizzo has been insulted on several occasions, and attacks have been made against the parochial house. And there was no lack of reason for such hatred; for, since the parish priest is obliged to oversee the administration of the confraternities and the collection of alms, it happened that he reprimanded some,

[*Latin ed. p. 134*]

134. The inhabitants of MELEVITANA, eager for vengeance, immediately began to accuse him before the Bishop. However, certain things must be observed regarding the other witnesses, which render their testimonies highly suspect. Thus, the priest Francis Muscat, who, while suspended as parish priest and during the course of the proceedings, acted in his place, and who, as one who strives to succeed him, harbors animosity towards the parish priest, investigates everything that might damage his reputation. Nor is the testimony of John Micallef more reliable: for he, being among the soldiers dedicated to maintaining public order (commonly known as a policeman), as he himself admits, was dismissed because he was intoxicated. Therefore, the defense argued, if the witnesses of the opposing side are highly suspect for one reason or another, then one must believe only those who, having been made aware of all the circumstances, knew perfectly well that the parish priest had been devoted to his service from the month of February until the beginning of the proceedings, and who were with him in everything. These, in their lengthy testimonies, attest that they never saw anything in the parish priest from which scandal could arise. Similar things are said by Salvator Fenech, husband of Mary, and by Victor, husband of Agatha, whose testimonies, the advocate believes, were made with particular eagerness: for they, more than others, had a reason to know whether the things commonly said about their wives were true. These, unanimously, praise the morals of the parish priest, and give no credence to the malicious words spoken against their wives. Indeed, although they know everything, they allow both themselves and the parish priest to visit their homes, and they receive letters from the parish priest. In agreement with these are

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Joseph Fenech, father of Agatha, and whose son is the husband of Mary: but rather than repeating the same thing, it must be added that the two priests, Fortunatus Debono and Aloysius Spiterij, give the best testimony regarding the life and morals of the parish priest, whose testimonies certainly no one would disregard, although they speak of events that are older than the last proceedings. Therefore, with these testimonies, all that which the enemies of the parish priest, the priest Francis Muscat, John Micallef, and others, attempted to prove, completely vanishes. Truly, the parish priest...

[*Latin ed. p. 135*]

The mother of Agatha, named Catherine, entered the convent; however, this was due to the needs of the parish. For, as both she and her niece, Lelina, were infirm, the parish priest would visit them to offer prayers for the sick to God, as recounted by the witness, Victor Azzopardi, and sometimes also to administer Catherine's confession, although neither Mary nor Agatha were ever present. All of this is so certain that even the opposing witnesses openly affirm it. And others confess the same. Nor are all the things presented by the adversaries true, either concerning the parish priest's preference for the children of Mary and Agatha, or concerning the dowry of Mary herself. For, as several witnesses state, the parish priest, Rizzo, loved all children, following the example of the Divine Redeemer. As for the letters, to which the proponents of the opposing view so certainly refer, claiming they were written by the parish priest Rizzo to the Fenech and Abela families, the defense argues that, according to the testimony of Publius Spiteri, these were sent to Salvatore Fenech and Victor Abela, who, as we have already seen, openly admit that they sometimes received letters from the parish priest while he was absent from the parish, either due to illness or other reasons, and that these letters contained nothing but honorable content. If, however, one or the other letter sent to Salvatore Fenech, or read by John Schembri or someone else, contained expressions that would certainly be unbecoming of a priest, these, being anonymous and having been tampered with, despite the expertise of the calligrapher, can be of no benefit to the adversaries, as the author of the "Ferrari letter L" argues: "For judges cannot proceed from such writings to a special investigation of the crimes they contain, even if witnesses were to appear who could testify to the crime, because such letters do not bring any infamy"; this is expressly stated in chapter 21 on accusations, paragraph 3 of the doubts, in Rodrig., vol. 2, regulations, part 6, article 10; Lessius, book 2 on justice and law, chapter 20, doubt 13, number 136. As for Lelina, whom the townspeople say is the daughter...

[*Latin ed. p. 136*]

136. In MELEVITANA, the parish priest, because, according to them, he presented his image, Salvator Fenech, testifies that he recognizes it as his

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own, and affirms that the child was born ten months after the beginning of the marriage. There remains only the deposition of the provost of the city of La Notabile, whose name is Joseph Oallus, who asserts more things against the parish priest Rizzo. But all these things concern events that occurred before the parish priest was suspended, and therefore, there is not much to insist on in these matters. Therefore, the advocate concludes, those things that are alleged against the priest Rizzo are false, and it follows that the sentence of the Episcopal Curia should be upheld.

PARISH PRIEST'S DEFENSE. But, on the contrary, there are more testimonies that seem to truly incriminate the parish priest Rizzo and to show that he had illicit relations with the aforementioned women, and that he violated the promises he had made on February 9th of the year 1892, under penalty of deprivation of the parish. And indeed, all that the parish priest states, to prove that some of his parishioners, for private reasons, are hostile to him, do not appear to be entirely true: as is gathered from the depositions of John Schembri, Caietan Micallef, and Henry Billas, who, being members of the public security forces, know those facts very well.

After these accusations, further evidence is also discovered from correspondence. Although the letters were addressed by the parish priest not to the women, but to their husbands, yet, from the testimonies presented, it is clearly demonstrated that this was done, in appearance, and to the extent possible, to foster a criminal relationship.

With these things explained, the purpose is to resolve the doubt as to whether the sentence of the Episcopal Curia of Melevitana of November 18, 1892, should be upheld or overturned in this case.

RESOLUTION. The Sacred Congregation, after deliberation on May 6, 1893, decided to respond: The priest Rizzo should be deprived of the parish, with a suitable pension reserved for him, to be determined by the Bishop, according to the resources of the benefice, and according to law.

[*Latin ed. p. 137*]

MELEVITANA 137 It is the opinion that the Bishop, in order to protect the reputation of the priest Rizzo, should set a deadline of ten days for him to send a notification to the parish, along with the pension; if this deadline is not met, the Bishop should publicly announce and execute the sentence of deprivation issued by the Holy Congregation. In the meantime, the matter should remain confidential. However, when this decision was brought to the attention of the parish priest Rizzo, he requested and obtained the benefit of a new hearing; therefore, the case was again presented to the Holy Congregation on September 9, 1893, and the response was: "In the decisions." It was hoped that the dispute would finally come to an end. But it was not so. For the parish priest Rizzo again appealed and obtained the benefit of another hearing.

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PROCEEDINGS OF THE CASE.

A SYNOPTIC SUMMARY

DEFENSE OF THE PARISH PRIEST.

The new advocate for the parish priest Rizzo asserts that the sentence of the Melevitana Court, dated November 23, 1892, by which he was removed from the office of parish priest of the town commonly called Casal Dingli, should be entirely overturned. And he states that several arguments support this claim; and indeed, it is clear to no one that a sentence issued on a false basis or on a false presumption is invalid. However, the advocate notes that the sentence of the Melevitana Court refers to a specific and precise suspension imposed on the parish priest on November 17, 1891, which never took place, nor could it have taken place. Indeed, he states, the document of said suspension cannot be found in the procedural records. Furthermore, it is established that the parish priest left his residence in the town of Dingli in May 1891 due to illness, and returned to his own region; and in November, he was still confined to his home due to illness, as evidenced by the testimonies of medical professionals and magistrates of the Conspicuae civitatis authority; therefore, the advocate argues, it was morally and materially impossible for the parish priest to have had relations with the women, Mary Fenech and Agatha of Agde, who...

[*Latin ed. p. 138*]

138. The inhabitants of the parish of Melelitana did not abandon their parish. And if there was no familial relationship, and the reason for suspending the parish priest is far removed, the advocate continues, the declared sentence must be overturned, and it is undoubtedly the result of a violation of the legitimate form of judgments and a perversion of justice. Indeed, the foundation of civil and criminal judgments is established by a written record, to which a formal dispute is added, the effect of which is that the plaintiff is not permitted to withdraw, or to change his intention during the progress of the judgment, to the detriment of the opposing party, who, if the intention were changed, would not have legitimate defenses at hand, nor would be prepared to respond. In the present case, the advocate notes, the written record was presented to the parish priest specifically because of his failure to fulfill his promises, which was clearly demonstrated; but the judge, disregarding the intention of the plaintiff, accepted evidence referring to the time before the promise and the time after the formal dispute, namely, evidence that was presented during the course of the criminal proceedings, and on this basis condemned the defendant to the loss of benefits. Therefore, the sentence itself testifies that

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if the court were to uphold the judgment, it would be established that the accusation was true, and the penalty of perpetual suspension would necessarily be imposed, and this not by the force of obligation... but by the force of law, or of a conciliar decree, Session 25, chapter 14. The parish priest was therefore condemned not for failing to fulfill his promises, but for offenses committed before or after the judicial summons, for which he, not being summoned, could not have presented appropriate defenses. Furthermore, the advocate insists, there was a violation of the three warnings prescribed by the Holy Council of Trent, Session 21, chapter 6, regarding appeals, and of the graduated penalties prescribed in Session 25, chapter 14. But these are entirely lacking in this case; therefore, the sentence must be overturned because the proper form was not observed, the advocate argues. Nor is it appropriate to consider the promise made by the parish priest as equivalent to three peremptory warnings. Indeed, this is not a matter of formality left to the judge's discretion, but of a formality expressly prescribed by law; the solemnities in criminal...

[*Latin ed. p. 139*]

MELEVITANA, 139 articles, concern the essence of law, therefore, no private individual's declaration is admissible, since "a private agreement does not derogate from public law." Ulpian, Reg. iur. 45. However, the advocate continues: "There are better arguments to demonstrate the nullity of the sentence, based on the principle of commutative justice." The judge of Melevitana imposed the capital penalty, drawing the law from a specific provision, Session 25, chapter 14, of the Holy Council of Trent, concerning the crime of concubinage. Therefore, it is incumbent upon the public prosecutor to prove (and if the accuser does not prove, the accused is acquitted) that the parish priest engaged in "continuous fornication with the same certain and definite person, so that, in addition to fornication, there is also a state and perseverance—the name 'state' comes from family life," which defines the nature of concubinage. Ferraris, Bibliotheca Canonica, verb. Luxuria, n. 7. But, according to the advocate, such proof is lacking. Indeed, the parish priest, while residing outside his homeland, received the handmaids Agatha of Ávila and Mary Fenech, but for many years this was done without anyone suspecting, and no one spoke ill of the parish priest; it only began when, after certain events, the parish priest, along with other administrators of the treasury of the Most Holy Sacrament, began to be suspected, although there was nothing to accuse the parish priest of, because of the presence of the women; and now they have not even been able to specify which of the two women is the subject of the suspicion; and even with the testimony, the provicar of Cal Ius gave the parish priest a warning "to dismiss one of them, who was constantly staying with him as a servant." To this, the advocate says, the parish priest complied, who, not dismissing one, but both, "was compelled (these are the words of the

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sentence) by the infirmity and hatred of the people to leave his home in the parish and return to his own region," namely in May 1891, and in the following time, he did not foster the familiarity that would constitute concubinage, or import a habit of sin, but communicated only by letters with those women; which, the advocate states, is wonderfully confirmed by the reinstatement in office granted by the Ordinary on February 9, 1892, and by...

[*Latin ed. p. 140*]

140. Having denied the allegation made by the parish priest, and desiring to leave the parish of Dingli a few days after the restoration, the defendant requested to be present at the hearing of the case before the Church tribunal. However, given the alleged restoration, according to the patron, the following applies, as Farinaceus writes in *Praxis Criminalis*, question 3, paragraph 1: "An investigation cannot be instituted against one who has already been acquitted of the same offense for which he is now being questioned. For the text in the Code states that one cannot be questioned twice for the same offense, and to attempt to accuse or question someone who has once been acquitted or condemned is prohibited by the exception of *res judicata*... For once someone has been condemned for a certain offense, he cannot be further questioned or harassed for the same offense. This principle, that one cannot be questioned twice for the same offense, is general, and applies not only to the acquitted but also to the condemned." Furthermore, the lawyer concludes, the defendant cannot be condemned to the penalty of deprivation, which is comparable to the death penalty, unless by confession or by conclusive proof of the crime. But even these things are lacking in this case. Indeed, according to the prosecutor, only one thing results from the promise made by the parish priest, namely, the suspicions of the people. The parish priest promised that he would not receive the women into his service, and he did not receive them; he promised that he would not live with them, but he did live with them; he promised that he would not speak with them, unless it was required by his pastoral duties, and he did speak with them, fulfilling his pastoral duties. The patron does not deny that the parish priest gave these women obscene letters, but he argues that these letters do not prove the crime, as they do not contain a confession of the crime; for, he says, this is not true. But even if such a confession were contained in these extrajudicial letters, it would only be an extrajudicial confession, which is insufficient to condemn, because it is a common principle that no one should be condemned based on circumstantial evidence or presumptions. After these remarks, the lawyer expresses confidence in the benevolence of Your Lordships, especially since his client, even if he has done something wrong, has already been sufficiently punished by a fine. Indeed, two years ago, he suffered the

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most serious punishment of suspension from the care of souls.

[*Latin ed. p. 141*]

MELEVITANA 144 leads a blameless life in the City, and the time elapsed has always seemed sufficient for reintegration into the parish, since the sentence of the Most Holy and Reverend Fathers was issued on July 23, 1740. However, the advocate adds, if the rigor of justice must be strenuously maintained in this case, it is necessary to completely fulfill the requirements of the legal process; it must be established that the parish priest is incorrigible and perseveres in his wickedness, to whom the penalty is inflicted. But the process completed in the Melevitana court does not establish the incorrigibility and perseverance in wickedness of the parish priest; therefore, he argues, the penalty of deprivation of the parish benefice cannot be confirmed unless, first, through a new process, the incorrigibility and perseverance in wickedness are established, with conclusive proofs. With these arguments in favor of the parish priest, the intention was to weaken the doubt as to whether one should adhere to or depart from the previous decisions based on the newly presented circumstances. RESOLUTION. The Sacred Congregation, after deliberation on June 16, 1894, decided to respond as follows: In the decisions, according to the manner: that is, the pension is not to be understood as granted, unless the Priest Rizzo is otherwise provided for. VARSAVIEN. DOUBTS REGARDING MATRIMONIAL CAUSES. On June 16, 1894. Council of Trent, Session 24, Canon 20. SUMMARY OF THE FACTS. The Archbishop of Varsaviensis, on November 18, 1893, presented to the Sacred Congregation certain doubts regarding the process in matrimonial causes, which he wished to have clarified. First of all, he recalls the decree of the Congregation of the Holy Office, dated June 5, 1889, which states that, when dealing with impediments...

[*Latin ed. p. 142*]

442 WARSAW. It is stated: "Regarding differences in worship, it is evident that one party was not baptized; regarding the bond, it is certain that the first marriage was legitimate and still exists; regarding consanguinity or affinity arising from a licit union, or spiritual relationship; finally, regarding clandestine marriages in places where the decree of Trent: - 'Although...' - was published, or is observed as such, provided that, from a certain and authentic document, or, in its absence, from certain evident arguments, it is clearly established that such impediments exist, and that the Church's authority has not dispensed from them, in these cases, without the solemnities required in the Apostolic Constitution - 'By the Mercy of God'..., the marriage may be declared null by the Ordinaries, with the intervention of a defensor vinculi matrimonialis, which is necessary for a second sentence." Therefore, the Archbishop asks: "Is the aforementioned general decree for

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the entire Church to be understood in such a way that, in judicial practice, it is permissible to disregard certain prescriptions of the Constitution of Benedict, and to close the case with a single sentence?" Since the solution to the matter clearly concerned the C. S. Office, a detailed response was received in writing on January 17 of the current year: which the esteemed Assessor of that Sacred Congregation deigned to provide, on February 19, 1894. From Your Eminence, a solution to the following doubt is requested, together with others regarding the proceedings in matrimonial cases proposed by the Archbishop of Warsaw: "Is the decree of the S. O. of June 5, 1889, general for the entire Church, to be understood in such a way that, in judicial practice, it is permissible to disregard certain prescriptions of the Constitution of Benedict, and to close the case with a single sentence?" In the Congregation, on February 16, the Eminent Inquisitors General, with the approval of the Holy Father, decreed: Affirmative. Regarding the second question, the Archbishop proposed this doubt: "Is it necessary to require that witnesses of the seventh hand be produced, in cases of nullity of marriage, examined before a spiritual judge, or is this only required in cases arising from..." This decree is found in Vol. XXVI, 639.

[*Latin ed. p. 143*]

WARSAW. In the 143rd section concerning impotence, it is to be observed, while in all other cases it may be omitted. To satisfy the second question, namely, "Whether the testimony of a seventh witness is required only in cases concerning the act of impotence," it seems that the answer should be "Affirmative." For the testimony of a seventh witness is a testimony of credibility, not of knowledge. These witnesses must swear that it seems probable to them that the spouses are telling the truth, as is evident from the Instruction of the Holy Office issued on August 25, 1840, in which it is prescribed that they should be asked "whether they have knowledge of the religion and honesty of that spouse (from whom they were induced) so that, for this reason, it seems probable to them and they believe that he has spoken the truth." And therefore, such witnesses should be chosen from among relatives; if none are available, then from among neighbors of good reputation, so that they may better know the spouses and testify to their veracity. Furthermore, if the nature of this testimony is such that it should concern only the truth of the spouses and not the fact itself, it is easy to infer that this testimony is required only when the fact itself is to be established not by positive arguments, but by testimony, especially that of the spouses. This occurs only in cases concerning the act of impotence, in which, therefore, this kind of testimony seems to be required. The same seems to be evident from the chapter of your letter concerning frigidity and male impotence, in which the custom of examining these witnesses appears to be introduced for the first time; for it speaks only of the case of impotence. It also seems to be confirmed by

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the practice of the Holy Congregation. In the document of the Matrimonial Tribunal of May 3, 1889 (1), in which the validity of a marriage entered into by force and fear was considered, no mention is made of the testimony of a seventh witness; therefore, the defender of the bond in the case under consideration, or the Eminents Fathers in rendering the judgment, made no mention of it.

(1) Reported in Volume XXII, page 85.

[*Latin ed. p. 144*]

VARSOVIA. They investigated the matter. The same occurred in Apuan. Matr. 8 June 1889 (1), in which the matter of an invalid marriage due to consanguinity in the third degree was discussed; the same in other cases; whereas, on the contrary, in cases of impotence, if possible, witnesses of the seventh degree are always examined. But, on the other hand, the testimony of the seventh degree seems always to be required in all matrimonial cases in which nullity is alleged or a dispensation is sought concerning a ratified but unconsummated marriage. The principal argument is the Instruction of the Sacred Congregation, published on 22 August 1840, which establishes the rule to be followed in conducting proceedings for matrimonial causes. Furthermore, in it, general precepts are given first, which must be observed in all cases, among which it is decreed: "Then the examination of the seventh degree must proceed, that is, seven relatives from each side, according to the form stated in chapter [of] your letter concerning frigidity and maladies. In order that the Judge may be able to carry this out more easily, the Defender of the Marriage will summon the plaintiff, so that he may indicate seven persons connected to him by blood or affinity, if possible; but if not, seven neighbors of good reputation. Each of these, after having heard the reading of the examination or confession of the spouse, who induced them, will be questioned as to whether they have knowledge of the religion and honesty of that spouse, so that, for this reason, it seems likely to them and they believe that he has spoken the truth. Similarly, at the request of the Defender of the Marriage, the other spouse will be summoned, etc." With these and other things generally established, the Instruction proceeds to the particular case of impotence, saying: "If the complaint concerns impotence, the expert physicians whom the spouses have consulted will be questioned; etc." From these things, it is evident that the precept of seeking the testimony of the seventh degree is not restricted to cases of impotence, but is extended to all cases, except those in which the most certain documents, especially if written and authentic, demonstrate the nullity of a marriage; and this, so that the law does not seem to be useless.

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(1) Compare Volume XXII, 220.

[*Latin ed. p. 145*]

WARSAW. It is stated, "in notorious cases, no proof is required." However, in other cases, when the law does not distinguish, nor should we, and when, often, even if there is no question of impotence, the testimony of a seventh witness, confirmed by oath, regarding the veracity of the spouses, can greatly assist the judge. Furthermore, this appears to be confirmed by the practice of the Holy Congregation. For example, in *Parisien. Matr. 3 Aug. 1889* (1), in which the dissolution of a valid but unconsummated marriage was considered, and there was no impotence or suspicion of impotence in either spouse, a seventh witness was heard. This also occurred in *Parisien. Matr. 15 Jun. 1890* (2), in which the dissolution of a valid but unconsummated marriage was requested because the husband, indeed devoted to the marriage, was unwilling to use the marital right. This also took place in a certain matrimonial case considered by the Sacred Congregation on August 12, 1882, February 17, and April 7, 1883, in which the husband sought a sentence of nullity of his marriage due to illicit affinity of the first degree from a prior marriage and due to a lack of consent. Seventh witnesses were also summoned in *Favent. Matr. 5 Martii 1892*, in which the matter concerned a marriage begun by force and fear; also in *Engolismen. Matr. 12 Dec. 1891*, in which no mention is made of the impotence of the spouses, and in countless other cases which I pass over, lest I become infinite. I believe the matter is made more evident if we return to the origin of the provision requiring the testimony of a seventh witness. Note that this testimony is either of a seventh witness; or of a seventh or fifth witness, as found in chapter 8 of *De Pur g. can.*, or of a fourth witness, as found in chapter 10 *h. t.*, extensively in the collection of decrees of Gregory IX. The reason is that Canon Law opposed the common purgation, of which title 25 of Book V is written; under which were included the uses of judicial combat, or the tests of hot or cold water, or of a heated iron, by which means the sacrilegious and superstitious civil court attempted to conduct criminal trials, to the common purgation, Canon Law opposed the purgation, or the...

(1) *Eecole Vol. XXII, 366.*

(2) *Videsis Vol. XXIII, 156.*

Acta, Tom. XXVII. fase. C CC XV. 10

[*Latin ed. p. 146*]

146. VARSAVIA. Canonical purgations. This consists in the presentation of witnesses who affirm that they believe the assertion of another to be true, and who, by their oath, solemnly confirm that statement and attest to its honesty; for this reason, these witnesses are called *coniuratores*, *compurgatores*, or *sacramentales*. Hence, in chapter 8 of *De Puritate*,

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Pope Lucius III decrees: "Because foreign judgments are prohibited [or, the common purgation], and we do not consider the purgation that is offered to be sufficient, we command that, if suitable accusers do not appear, the accused should demonstrate his innocence through a canonical purgation, using the seventh or fifth hand of his order [as he may deem appropriate], etc." In chapter 10 of the same collection, Pope Innocent III states in substance: "Considering, however, the common infamy, the grave scandal, and the vehement suspicion arising from the statements of witnesses, which seemed to be directed against the Dean, and since, for each of them, a canonical purgation was to be given, and in order to maintain justice and to mitigate rigor, we judged it necessary to have a purgation given by the fourth or tenth hand of his order." The duty of these witnesses is clearly stated in chapter 13 of the same collection: "Concerning witnesses: (and so on) Those who are induced to purge the infamy of another are only bound to affirm by oath that they believe what is said by the person being purged to be true." Van-Espen, *Part III, De Institutione Causarum Criminalium*, title VIII, explains the meaning of the term "hand" as follows: "Since the hand has always been a symbol of faith; and therefore, in judgments and contracts, where faith is added, it has also been customary to extend the hand as a sign of faith; as is still done today, when oaths are taken with extended hands; and therefore, it is not uncommon in ancient laws to find the phrase 'to purge oneself by the fifth hand, the sixth hand, the seventh hand, or the twelfth hand,' that is, with five, six, seven, or twelve oath-takers." Consequently, witnesses of credibility are used in criminal cases or other matters concerning the public good, when there are either insufficient evidential proofs, or when such proofs cannot be obtained due to the nature of the case, as often happens in matrimonial causes, which concern acts...

[*Latin ed. p. 147*]

WARSAW. 147. Sometimes, only a glimpse is afforded to spouses. Therefore, it was necessary to strengthen and secure the faith of the spouses as much as possible, not only in cases of inability to consummate the marriage, but also in other matters. Finally, the Archbishop presents a third complex question under these four doubts: 1. "Is it permissible, without a special permission for each case from the Holy Congregation, to receive a petition and initiate a process in order to obtain a dispensation from the Holy See? - No. 2. "Is it permissible, after a complete investigation of the cause based on the title of physical impotence, when the examination of the bodies has demonstrated the wife's virginity, but has not overcome the husband's impotence, to transmit the records of the case to the Holy Congregation in order to obtain a dispensation from the Holy See? 3. "If the wife, claiming to be a virgin and proving her virginity through examination, accuses her husband of impotence, and he is contumacious, or, to compare, denies

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it, but refuses to submit to the examination, is it permissible to proceed with the process unilaterally, that is, solely at the wife's request, and subsequently transmit the records to the Holy Congregation, in order to obtain a dispensation from the Holy See; or should the process be halted, and permission sought from the Holy Congregation for further investigation? 4. "In the aforementioned cases (1, 2, and 3), is it necessary to include not only the conjectures of the Defender of the Bond, but also the opinions of a Theologian and a Canonist?" First, it must be inquired whether processes in matrimonial causes concerning a marriage valid but not consummated can be conducted by Ordinaries without the delegation of the Roman Pontiff. Regarding the proposed question, the following should be noted. Agens Bouix, concerning the manner to be observed regarding dispensations for marriages valid but not consummated, and inquiring whether, in expediting a cause for such a dispensation, the formalities prescribed by Benedict XIV in causes of nullity of marriage should be observed at the Holy Congregation, states (De iudiciis II, c. 3).

[*Latin ed. p. 148*]

148. VARSAVIEN. "The cause for a dispensation concerning a marriage that is valid but not consummated always implicitly contains and involves the cause of the nullity of the marriage: for in the cause of said dispensation, the Sacred Congregation must resolve this doubt: Whether it is now advisable to grant a dispensation for the marriage (which is alleged to be not consummated). However, this doubt cannot be resolved affirmatively unless the other doubt is first resolved, namely, whether the consummation of the marriage actually occurred. As this final doubt is resolved affirmatively or negatively, it is declared whether, after obtaining the dispensation, the new marriage that would be contracted, and also the previous marriage for which the dispensation was sought, will be valid or invalid. Therefore, to resolve the cause for a dispensation concerning a marriage that is valid but not consummated is simultaneously and indivisibly to resolve the cause of the nullity or validity of some marriage." If these things are true, it certainly follows that any Bishop within his diocese, since he is the judge in the first instance concerning the validity or invalidity of marriages, can himself complete the process concerning the lack of consummation of the marriage in order to obtain the dispensation. Furthermore, Benedict XIV in his most celebrated Constitution *De miseratione* expressly states that, in cases concerning a dispensation for a marriage that is valid but not consummated, a suppliant petition must be presented to the Roman Pontiff, in which a full and accurate account of the entire matter is contained, and all the reasons are expressed that the suppliant believes may contribute to obtaining the requested dispensation, so that the Roman Pontiff, after reading and carefully considering it, may deliberate whether to reject the petition or to refer its examination to one of the Roman Congregations.

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Moreover, what value will be attached to the affirmations contained in such a suppliant petition, upon which the Roman Pontiff can rely in order to refer the case to a Congregation, unless they have been authentically verified by the Bishop? And how will the Bishop accomplish this, except through an instituted process? Given these circumstances, it seems that, with regard to the 2nd and 3rd doubts, it is possible for the Bishop, with complete authority...

[*Latin ed. p. 149*]

WARSAW. In cases where the cause is presented under the title of physical impotence, and the examination of the bodies demonstrates the wife's virginity, but does not reveal the husband's impotence, it is permissible to transmit the proceedings to the Holy Congregation in order to obtain the Holy dispensation. Furthermore, if the wife should attempt to prove her virginity through examination, and the husband falsely claims impotence, and either refuses to appear or, appearing, denies his impotence, and also refuses to undergo the examination, the Bishop may proceed further with the process solely at the wife's request, and subsequently transmit the proceedings to the Holy Congregation for the purpose of obtaining the dispensation. This is confirmed by the fact that (as the Archbishop of Warsaw reports) without the permission of the Holy Office, a certain process for obtaining a dispensation for a marriage that was valid but not consummated was initiated; this ecclesiastical court sent the proceedings to Rome, and a dispensation was granted on April 20, 1885. Not only did the Holy Congregation find nothing to reproach regarding the form of the process, but the Defender of the Marriage, by virtue of his office, testified that the process was perfectly executed, having been conducted with the utmost precision in accordance with the prescriptions of Benedict XIV in these cases and as declared by the Sacred Congregation of the Council. Thus far, regarding the first three questions; the fourth question does not present any difficulty, for when the proceedings are to be transmitted, the observations of the Defender of the Marriage are also required by virtue of his office, and without these, the process is not complete in matrimonial cases; however, nowhere in the law is it prescribed that the opinion of a Canonist and a Theologian must also be included in the proceedings; therefore, this requirement must be observed. On the contrary, regarding the primary and most important question of the first doubt, namely, whether the Bishop, without the delegation of the Supreme Pontiff, can conduct a process in matrimonial cases for the granting of a dispensation, the answer seems to be negative. For it must be admitted as a fundamental principle that the right to conduct a process arises in the judge from the object which is to be judged, so that the process is like a necessary means to an end.

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Therefore, if the judge has no authority in that matter,

[*Latin ed. p. 150*]

150. VARSOVIA. The authority to render a final judgment does not possess the power to conduct a trial. Therefore, it does not have the authority to summon parties or to impose upon them any other acts of the legal process under penalty of contumacy, which is not admitted except through disobedience to a competent judge; whereas, to an incompetent judge, according to the aforementioned, one may lawfully refuse to comply. Indeed, if a Bishop, considering the request of a certain Bertha for the initiation of a process to obtain a dispensation concerning a valid but unconsummated marriage, were to summon her husband to his tribunal, would not the latter be able to respond that he does not wish to appear, because the Bishop cannot grant this dispensation, and is therefore recognized as incompetent in this matter? For the judgment is the final and substantial part of the process, to which the judicial means must necessarily be ordered. With these premises established, it becomes clear how § 14 B of the aforementioned Constitution, and especially these words, should be understood: "there — '... a petition must be presented to Us, or to the Roman Pontiff for the time being (namely, by the Ordinaries), in which a complete and accurate account of the entire matter is contained, and all the reasons are expressed which the petitioner considers to be conducive to obtaining the requested dispensation, so that the Roman Pontiff, having read and carefully considered it, etc.'" From this, it is clear that the Pontiff is speaking of an extrajudicial presentation of facts by the petitioner, without the involvement of a judicial process. Thus, the Pontiff decreed that such cases were entirely matters of grace and were rarer, not as frequent as they are now, nor necessarily involved in a judicial dispute, as is the case today, when causes arising from the head of impotence, or from some other impediment, if possible, are resolved through a dispensation from a valid but unconsummated marriage. Then follows the response to questions 2 and 3. The matter or object of a judgment is an action, as is explicitly stated in - "Regolamento Legislativo e Giudiziario di Qreg. XVI, part. III, tit. I, § 396: 'All judgments have as their object a personal, real, or mixed action; the nature and character of each action is determined by the laws of common law.'" Therefore, when a party brings a *rumm* action...

[*Latin ed. p. 151*]

VARSAVIA. In casos de nulidad matrimonial por causa de impotencia, el Ordinario, siendo plenamente competente, puede emitir un decreto de citación, y proceder contra el contumaz mediante medios coercitivos; pero, si esto no resulta eficaz, o si, a pesar de estos medios, la contumacia no se disipa, entonces, a petición de la parte más diligente, procede a obtener las pruebas necesarias, las cuales son intrínsecamente eficaces en un juicio

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de nulidad por causa de impotencia. Si el esposo, presuntamente impotente, es contumaz en todo, o si simplemente se niega a someterse a la exploración física, en este caso, el Obispo no puede pronunciar sentencia sobre la impotencia, pero debe concluir el proceso ya iniciado, declarando que no se ha probado la nulidad por impotencia del esposo, debido a su contumacia, aunque las pruebas presentadas favorezcan la parte demandante debido a la integridad original de la mujer. Luego, si la mujer desea, puede solicitar al Sumo Pontífice una dispensa del matrimonio ratificado pero no consumado, y así ejerce su derecho; y el Obispo no puede denegar el proceso, y, en todo caso, nada requiere corrección. Porque es doctrina bien conocida que se deben distinguir los actos de la causa de los actos del juicio. Los actos del juicio se refieren a aquellos que se refieren a la ordenación del juicio: como la citación, la contestación de la demanda, los plazos perentorios o útiles, y otros de la misma clase; los actos de la causa se refieren a la investigación de la verdad para resolver la controversia; como los testimonios, los documentos, las confesiones y, en general, todas las pruebas que se incorporan al expediente. Sin embargo, una vez que se presenta una demanda o se termina el juicio, los actos del juicio no tienen efecto en una nueva demanda; pero los actos de la causa, o las pruebas, son válidas incluso en otro juicio entre las mismas personas, como se deduce de Reiffenst. Lib. II, Decret., tit. I, n. 187; Pirhing, h. t., n. 96, cap. 11 De testibus, y 2 De exceptionibus. Por lo tanto, los actos de la causa en un juicio por causa de impotencia tienen pleno valor, si se han obtenido legítimamente de otra manera, incluso en una nueva demanda ante el Sumo Pontífice para obtener una dispensa. Por lo tanto, se confirma la respuesta ya dada al cuarto caso, a saber, que el Defensor del matrimonio debe, por oficio, presentar sus observaciones.

[*Latin ed. p. 152*]

152 WARSAW. When a process is concluded in the Curia, whether by the ordinary authority of the Bishop or by a delegated authority from the Holy Father, because, according to the canons, this work of the Defender of the Marriage is required by office, but nowhere is it inquired among the procedural acts, the opinion of Theologians and Canonists. However, the Archbishop, encountering the case of a negative response, offered these prayers: "Finally, if the decision of the Sacred Congregation [of Matrimonial Causes] regarding the three previous questions should be negative, I earnestly implore Your Eminence to present my most humble prayers to the Most Holy Lord, so that, in such cases, which recur repeatedly, to myself and to my Suffragan Bishops in the Province of Warsaw, for the danger of incontinence, a permission may be granted, given the imminent peril in places so far from Rome, to conduct a cause for the dispensation of marriage without a special petition for each case, after a preliminary informative process regarding the causes for the dispensation, and then to

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transmit the documents to the Sacred Congregation, so that, if the Most Eminent Fathers deem it fitting, a petition may be made to the Most Holy [Father] for the granting of the benefit of the dispensation." It will be the judgment of Your Eminences' wisdom and prudence to decide whether and how to grant assent to these prayers. In the meantime, I am permitted to point out that nothing in the law seems to obstruct the Bishop's petition from being received favorably; moreover, this method of proceeding appears very suitable for the diligent and expeditious handling of judgments, which has always been Your Eminences' concern. With these observations in mind, the following questions have been proposed for consideration: I. Is it necessary, in causes of nullity of marriage, for any reason whatsoever, that witnesses of the seventh hand be produced before the Spiritual Judge, or is this only to be observed in cases arising from the head of impotence, and can it be omitted in all other cases? II. Is it permissible, without a special permission from the Sacred Congregation for each individual case, to receive the petition and to institute a process in order to obtain the dispensation of the Most Holy [Father]?

[*Latin ed. p. 153*]

WARSAW. 153 And to the extent that it is negative: III. Is it permissible, after a complete investigation of the cause based on the title of physical impotence, when the examination of the bodies has demonstrated the wife's virginity, but this has not overcome the husband's impotence, to transmit the case to the Sacred Congregation in order to obtain a dispensation from the Most Holy? IV. If the wife, claiming to be a virgin and proving her virginity through examination, accuses her husband of impotence, but he is stubborn, or, to compare, denies it, but refuses to yield to the examination, is it permissible to proceed with the process unilaterally, that is, solely at the wife's request, and subsequently transmit the case to the Sacred Congregation in order to obtain a dispensation from the Most Holy; or should the process be halted, and permission sought from the Sacred Congregation for further investigation? V. In the cases mentioned above (I, II, and III), is it necessarily required to include not only the conjectures of the Defender of the Bond, but also the opinions of the Theologian and Canonist?

RESOLUTION. The Sacred Congregation of the Council, after discussing the matter on June 16, 1894, decided to respond as follows: To I. Negatively, to the first part; and the testimony of a seventh witness, strictly understood, is required to corroborate the confession of the spouses regarding the lack of consummation of the marriage. To II. Negatively. To III. and IV. Affirmatively. To V. Negatively.

FROM WHICH THESE CONCLUSIONS ARE DERIVED:

I. The Decree of the Holy Office of June 5, 1889, has the force of a general

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decree, so that it is permissible for all episcopal courts of the Catholic world to overlook something in the judicial process based on the Constitution *Dei Miseratione*, and to close marriage cases in the cases described in the decree.

II. The production of witnesses of the seventh witness is not required in cases of nullity of marriage based on any title; but such testimony, strictly understood, must be required to corroborate the confession of the spouses regarding the lack of consummation of the marriage.

III. Witnesses of the seventh witness are not to present testimony.

[*Latin ed. p. 154*]

154. VARSAVIA. This pertains to matters of science, but also of credulity; for they are asked whether they believe that the spouse, from whom they have been induced [into marriage], has spoken the truth, considering his religion and his honesty. IV. Bishops, without the delegation of the Supreme Pontiff, cannot conduct a process in matrimonial cases for the obtaining of a Holy dispensation, because Bishops lack the authority to judge this matter with a definitive sentence. V. This is also evident from the Benedictine Constitution § 14; in which Ordinaries are commanded to present to the Holy Father a petition, in which the details of the case are accurately written, and the reasons leading to the requested dispensation, without any mention of judicial proceedings. VI. After a complete investigation of the case under the title of impotence, and the wife's virginity having been demonstrated through a physical examination, it is permissible, at the wife's request, to continue the process and to send the records of the case to the Sacred Congregation, even if the husband's impotence has not been proven; because the woman is entitled to use her right if she requests a dispensation from the marriage, which is valid but not consummated, from the Roman Pontiff. VII. It is not, however, necessary to send, along with the records of the case, the opinion of a theologian and a canonist, but only the observations of the defender of the bond, by virtue of his office. PINNE. BURDEN. July 14, 1894. From the Third Council, Session 7, Chapter 8, concerning reform. SUMMARY OF THE FACTS. In the town of Tossiccia, in the Diocese of Penne, the care of souls was provided until the year 1579 by three chaplains, appointed by the local Municipality, of whom two received their due compensation from two Curates, one of Saint George in Ornano, and the other of Saint Andrew in Flammignano. The town of Tossiccia, in the year 1579, presented a petition to the Bishop of that time, John Baptist de Benedictis, to...

[*Latin ed. p. 155*]

PINNEN. 155 would deem it fitting to elevate that Church to the dignity of an Archpriestly Church; which the same Bishop benignly granted through a Bull on March 20, 1579, decreeing that the Archpriest, perform-

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ing his pastoral duties, would be assisted by three Chaplains, with the authority and faculty of governing and managing the movable and immovable goods of the Church itself. The same Bull granted the municipal authority the right, perpetually, to present the Archpriest; confirming his right to appoint two chaplains, chosen from among the two Curates mentioned above, who were endowed with a certain provision. The Bishop would ensure that a third chaplain be chosen and appointed by the aforementioned Archpriest, at his discretion and will, and that in the event of the death of a chaplain, or if the Archpriest should neglect to appoint a replacement, the fruits which, in the meantime, are received from the portion of said chaplaincy, shall be ceded and must be ceded for the benefit and advantage of said Church. To the chaplain, we wish to be given and delivered by the aforementioned Archpriest all and any fruits, revenues, and emoluments arising from the legacy made by the late Christopher Cicci concerning said land; and if the Archpriest should neglect to appoint and name a chaplain, the fruits of said chaplaincy shall be ceded and converted, and must be ceded and converted solely for the benefit and advantage of said Church, and in no other way, nor by any other means. Meanwhile, over time, it happened, but how it occurred is unknown, that the municipal authority collected payments from the Curates, which were established for two chaplains, and recorded these in the Public Books, as receipts and expenditures; so that this action, of collecting this contribution, which the municipal authority subsequently provided to the chaplains, did not occur only once, but repeatedly. Indeed, there are some decrees of the Tribunal in the records, in which this executive action of the municipal authority is recognized and defended. However, in 1876, the Archpriestly Church, having been deprived of two chaplains, who were supported by the Curates, was no longer provided for in the same way, due to the lack of priests. Nevertheless, the municipal authority continued to demand the payments from the two Curates, which were customarily made for the chaplains, until 1886, when the Holy...

[*Latin ed. p. 156*]

456. The parish priest, George, opposed this request, because the chaplains were no longer being appointed. Previously, the municipality had appealed to the administrative authority, which recognized no right to collect this tax, and indeed ordered that the curator's payment be removed from the public accounts. However, not acquiescing, the municipality wished to try its case in the courts, but with no better outcome, for in all levels of jurisdiction, it was forced to withdraw; not because it was judged that the curators were obligated to pay their tax even without chaplains, but with this entire question remaining unresolved, it was decreed that the municipality, in any circumstance, lacked the right to bring an action to assert this right against the curators. Since the municipality was excluded from

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exercising this action, it necessarily followed that the archpriest should immediately intervene, who, having previously protested that he would not go to the civil court, in 1890 instituted a legal proceeding before the Sacred Congregation, requesting that the right to demand this payment from the curators be recognized to him, and that, if it could not be paid for the support of the chaplains, it should be converted into other expenses necessary for the worship of his church, especially due to the urgent repairs needed to the church building. To prove his right, the plaintiff primarily invoked a continuous custom of three centuries, according to which the curators had always paid the tax to the archpriest's church. He claimed that this obligation had been solemnly assumed by the curators through a public instrument on February 17, 1760, as well as through the aforementioned Bull, dated March 20, 1579. In particular, with regard to this Bull, he considered the previously cited subsequent words, which refer to the third chaplain being eligible to be chosen by the archpriest, and which clearly state that a portion of the vacant chaplaincy should be paid for the benefit and advantage of the church, and no other purpose. Then he noted: it could not be denied to the archpriest to bring this action, since the municipality had rightfully been deprived of this right.

[*Latin ed. p. 157*]

PINNEN. 157, because the document of erection stipulates that the archpriest is responsible for the administration of the movable and immovable goods of the Church. Because, according to the allegations of the archpriest, a document dated February 17, 1560, of considerable importance, establishing the obligation of the curators to make payment; it was my concern to write to the Ordinary to have the same document transmitted to the Sacred Congregation. However, the Ordinary, without contradiction from the archpriest, repeatedly protested in his letters that this document could not be found in the archives or any similar place, nor was it related to the present legal dispute. Finally, on December 18, 1893, the same archpriest wrote to the Sacred Congregation, lamenting that, after various proceedings before this tribunal, the matter had not yet been brought to a conclusion, and he concluded by announcing, as if through a loophole, that he, having the authority of the Ordinary, had already brought the case before the civil tribunal. The curators involved in this case appointed their own advocate, who primarily noted that the payment consisted of "seven measures of wheat and seven measures of wine (must) for each," as stated in the report of the episcopal curia. Furthermore, the advocate notes that the archpriest, having disregarded the appeal presented to the Sacred Congregation, has instituted a civil lawsuit against the parish priest of Saint George, located in Ornano, in order to compel him to make the payment; and thus, he fears that he has incurred the censures prescribed by the Apostolic Constitutions.

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A SYNOPTIC ACCOUNT OF THE DEFENSE OF THE CURATORS.

After certain preliminary statements and a recounting of the historical facts, the advocate argues that, in the absence of chaplains, the parish priests in question are not obligated to make the payments. Indeed, it was established that the payments were to be made to provide suitable sustenance to the chaplains who would perform the parochial duties together with the archpriest of the locality of Tossiccia, and who would cooperate in the same duties with the parish priest of Saint George, located in Ornano, whose parish consisted of seven small villages, situated in a vast region. With the cessation of chaplains...

[*Latin ed. p. 158*]

158. Concerning those assistants, the *pellanes*, who would help in the care of souls, the proper sustenance ceases with them, because it cannot be maintained when they are not present. For there is no legitimate reason assigned for it. Furthermore, the Patron argues that this is confirmed by the very episcopal decree by which the Archpriestship is established in the parish church. Indeed, in the aforementioned decree, no mention is made of assigning a salary to two *pellanes*, nor of the two aforementioned parish priests paying it. The Advocate continues: The opposing party brings forward an instrument from the year 1560, in which it is claimed that our parish priests assumed the obligation of paying the dues owed to the parish priest of Loci Tossiccia. However, from two responses of the Court, it is not established that the aforementioned instrument exists or is true, and therefore, that an obligation was assumed. Since the cause of the obligation is not established, it necessarily follows that its effect also ceases. On this matter, Tiraquellus says: ”When the cause of an obligation ceases, so too does its effect.” *Tractatus de Causarum Cessatione*, part 1, chapter 22. Moreover, it is well known that a rule of the Sacred Canons states that the burdens of benefices are taken from the foundation documents and are measured, so that they cannot be increased. *Clementinae*, book 3, title 11, concerning religious houses. Furthermore, from the foundation documents, it is not apparent that the Archpriest can demand payments for the purpose of restoring the church or for expenses related to worship. Therefore, it is clear that, in the absence of *pellanes*, the aforementioned parish priests are not obligated to make these payments. This, in fact, is confirmed by canon 99 of the decrees on obligations, which teaches that the cause of an obligation must be expressly stated; if it is not, it must be understood to have been omitted, as it states: ”Whatever is said as the cause of an obligation, if it is not expressly stated in words, it must be understood to have been omitted.” But in this case, it is clear that it was not stated that, in the absence of *pellanes*, payments were to be made for the restoration of the church or for expenses related to worship. But even if the *pellanes* were present, the Advocate continues, even now, the parish

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priest of Saint George would not be obligated to make the payment. For he would have no means of paying it.

[*Latin ed. p. 159*]

PINNEN. 159: The stipulated sum, consisting of 225 annual florins, as testified by the Syndic of Tossiccia. For the parish priest of St. George does not receive the proper stipend assigned by the Council of Trent, nor does he have a suitable provision for his honest sustenance. The patron then argues, "It is futile to claim that the Municipality of Tossiccia has the right to appoint chaplains. For this right carries with it the obligation of the Municipality to provide for their support. He who enjoys the benefit must also bear the burden, which is as it were, intrinsically linked to the benefit; therefore, he cannot only claim the stipulated sum, but must provide it." Finally, it was noted that the Bishop had not given his judgment in this dispute, but he clearly expressed his opinion, stating that the intentions of the Archpriest did not seem to him to be justified, unless the documents, which have been fruitlessly sought, are produced, and upon which the Archpriest relies. With these points noted, the question was raised: Whether, despite the lack of chaplains, the stipulated sum should be paid by the curates in this case.

RESOLUTION. After deliberation by the Sacred Congregation on July 14, 1894, it was decided to respond: Negatively and with reservations.

PARENTINA AND POLEN. DOUBTS REGARDING TESTIMONIAL LETTERS FOR HOLY ORDERS. July 14, 1894. Through summary petitions. The Ordinary reported: "My diocese lacks its own seminary, and secondary schools, except for the Royal Gymnasium of Pola. Candidates for the priesthood, in order to dedicate themselves to the study of theology, are received for four years in the central seminary."

COMPENDIUM PACTI.

[*Latin ed. p. 160*]

160. PARENTINA AND POLEN. In Gorizia, there are currently sixteen young men being supported from my Diocese. Before entering the study of theology, these young men complete their gymnasium studies at institutions of the civil order. In order that the religious education of these young men, who aspire to the ecclesiastical state, may be properly overseen, a foundation was established in Justinopoli fourteen years ago, where they are supported. The directors of this foundation are appointed by me, although they are under the jurisdiction of the Ordinary of that place; just as the directors of the seminary, in which sixteen young men sent from my Diocese are educated for the study of theology, are under the jurisdiction of the Ordinary of Gorizia. With these things stated, so that I may not seem

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to disregard the sacred canons, and especially the Constitutions *Speculatores* of Innocent XII, and those of Pope Pius IX concerning the collation of holy orders, I request of the Apostolic See whether the attestations of good morals obtained from the directors of the aforementioned institutions are sufficient, or whether testimonial letters from Bishops must be obtained, in whose Dioceses the Seminary and the Foundation are located.

DISCUSSION: TESTIMONIAL LETTERS DO NOT SEEM TO BE REQUIRED. However, there are legal considerations that should not be dismissed. For the Constitution *Speculatores* of Innocent XII, which deals with testimonial letters, states: "that if anyone, within a certain period of time in the place where, as is stated above, he was born, has experienced a delay such that he might have been hindered there by some canonical impediment, then he must also present to the Ordinary of that place the testimonial letters, as mentioned above, and these letters must also be presented to the Bishop who is ordaining him, so that he may, in turn, attest to their suitability for the collation of orders." Here, the Bull clearly speaks only of the case of a domicile acquired accidentally in the place of origin; but the strict provisions of the law cannot be applied to each case individually. Hence, the Sacred Congregation of Rites, in Turrita, or Bosa, on March 17, 1708, among other things, considered the following question: "Are the subjects of the Bishop of Bosa, if, whether by reason of domicile or of origin, they have experienced delays in the city..."

[*Latin ed. p. 161*]

161 PARENTINA ET POLEN. To the question whether, in the case of a Saxon priest, he could be promoted to the orders by the same Bishop without testimonials from the Archbishop, it was decided that the answer should be affirmative. And in the same sense, the answer was given in Algaren on August 3, 1709, and in Vicenza, or Neritonen, on June 17, 1719. Therefore, the prudence of the Bishop is to be commended in a case where he was not bound by any obligation, yet, for caution's sake, he requested testimonial letters from the directors of the Seminary. TESTIMONIAL LETTERS SEEM TO BE REQUIRED. But it should be noted that, contrary to the aforementioned decisions, the jurisprudence of the Sacred Congregation has subsequently taken a different view, as clearly demonstrated in the documents from Ascoli, or Montalto, dated February 3, 1733; Fabriano, August 19, 1797; Lünen, May 29, 1824, and especially from Spoleto and Rieti, dated July 11, 1840, in which the Sacred Congregation, in response to the question: "Whether a cleric named Cyril Cliri was lawfully promoted to the order of subdeacon by the Bishop of Rieti without these testimonials," answered: "Given the particular circumstances present in the case under consideration, there is no need to be concerned; however, in similar cases, testimonial letters should be requested, according to the opinion of the Most Reverend Relator." In the opinion of the Most Reverend Relator, the

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following was read: "Of these two opinions, which are in disagreement with each other, the second is more pleasing to me, because not only is it more recent, but it is also more in accordance with the subsequent decrees of the Sacred Congregation; and it more closely approaches the purpose and wisdom of the Constitution of Innocent, and completely excludes the inconveniences that could arise from the contrary opinion; therefore, I do not deviate from this stricter, but safer, opinion in the case at hand, etc." Regarding this formal obligation, after the threat of suspension by the Apostolic Constitution under article 3, against the ordaining party, without these testimonials, it can no longer be doubted that he is "a subject properly belonging to that place, who has been delayed there for so long that he could have incurred a canonical impediment there." Furthermore, since Innocent XII in the Constitution *Speculatores* states that these letters must be given by the Bishop, by the Ordinary, and the Apostolic Constitution requires these letters from the Ordinary, it cannot be admitted, as stated in *Vet. Tom. XXVII. fase. C CC XV. 11*.

[*Latin ed. p. 162*]

462 PARENTINA ET POLEN. Let the opinion of the Bishop be given, that letters from the Moderators of Seminaries, which do not come in the name of the Ordinary, are not sufficient, nor do they possess the authority to grant these testimonial letters. Having considered these matters, it was asked what should be answered in response to the inquiry. RESOLUTION. The Holy Congregation, after deliberation on July 1, 1894, decided to respond: That testimonial letters must be requested from the respective Ordinaries of the place. FROM WHICH IT IS UNDERSTOOD: In order that a Bishop may be able to promote his subjects, who reside elsewhere, to the Holy Orders, testimonial letters from the Ordinary of the place where the subjects are to be ordained must be obtained (1). FROM THE ENCYCLICAL LETTER OF THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS, issued by the order of Pope Leo XIII, concerning the Holy Preaching, addressed to all the Bishops of Italy, and to all the Superiors of religious Orders and Congregations. The Holiness of N.S. Pope Leo XIII, to whom the apostolic ministry of preaching is so dear, and which is so necessary, especially in these times, for the proper instruction of the Christian people, has, with great sorrow of heart, learned that certain grave abuses have been introduced into the manner of proclaiming the divine word, which often render the preaching of today either contemptible or, at the very least... The Most Holy Father, Pope Leo XIII, to whom the apostolic ministry of the Holy Preaching is so dear, as it is so necessary for the proper instruction of the Christian people, especially in these times, received with great sorrow of heart that many sins have been committed in proclaiming the mysteries of the Faith, and that, for some years now, grave abuses have occurred in such a way that the Holy Preaching is often held in contempt.

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(1) Recole Vol. XXVI, 112. In Fermo, see page 428. In the same volume, it is resolved that testimonial letters from the Ordinary of the place are necessary whenever someone is to be promoted to the Holy Orders and has resided in that place for at least three months. See also Vol. XIV, 392, 398; as many things have been collected concerning testimonial and dismissal letters.

[*Latin ed. p. 163*]

ENCYCLICAL LETTERS are neither sterile nor fruitless. Therefore, following in the footsteps of his predecessors (1), he ordered this Holy Congregation of Bishops and Regulars to address the Ordinary pastors of Italia and the Superiors General of the Religious Orders, to strongly encourage their vigilance and zeal to, as far as is within their power, provide a remedy for these disorders, and to ensure that they are completely removed. Therefore, obeying the august commands of the Holy Father, this Holy Congregation presents the following rules to the Reverend Ordinary pastors and Heads of Religious Orders and pious ecclesiastical institutions, so that they may diligently and carefully ensure their observance.

1. First, with regard to the qualities of the sacred preacher, let them be warned never to entrust so holy a ministry to anyone who is not endowed with true Christian piety and is not inflamed with great love for Our Lord Jesus Christ, without which he would be nothing other than *a sounding brass, or a tinkling cymbal* (2); nor could he ever possess that true zeal for the glory of God and the salvation of souls, which must be the sole motive and the sole end of evangelical preaching. And this Christian piety, so necessary, becomes either useless or completely fruitless. Therefore, following in the footsteps of his predecessors, this Holy Congregation, entrusted with investigating the causes of these matters, has ordered that it should address the Bishops of Italia, and the Superiors of the Religious Orders, and strongly encourage their vigilance and zeal, so that, as far as is possible for them, they may provide a remedy for this affliction, and take care that it is completely removed. Obeying, therefore, the august precepts of the Most Holy Father, this Holy Congregation presents these rules to the Roman Bishops, and to the Heads of Religious Orders, and of ecclesiastical institutions, to be observed with all diligence and care.

(1) Among others, Clement X, Innocent XI, Innocent XII, and Benedict XIII, either through pontifical acts, or through the Holy Congregation of the Council or that of the Bishops and Regulars, issued, according to the needs of the times, wise prescriptions concerning the sacred preaching.

(2) 1 Corinthians 13:1.

[*Latin ed. p. 164*]

ENCYCLICAL LETTERS: To the sacred heralds, it is necessary that their outward conduct also shine forth, which must never contradict their teach-

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ings, nor contain anything secular or worldly, but must always be such that they are seen as true ministers of Christ and dispensers of the mysteries of God (1); otherwise, as the angelic St. Thomas observes, if the doctrine is good, but the preacher is bad, he himself is an occasion for blasphemy against the doctrine of God (2). This true Christian piety, so necessary for the heralds of the divine word, must also shine forth in their outward manner of acting, which must not contradict the traditions contained in documents; nor must they present themselves in a vulgar or worldly way; but they must conduct themselves in such a way that everyone considers them ministers of Christ and dispensers of the mysteries of God (1 Corinthians 4:1): otherwise, as St. Thomas Aquinas points out, if the doctrine is good, and the preacher is bad, he himself is an occasion for blasphemy against the doctrine of God (Commentary on Matthew 5). Furthermore, piety and Christian virtue must be joined with knowledge, for it is manifestly and continuously proven by experience that a truly solid, ordered, and fruitful preaching cannot be expected from those who are not nourished by good studies, especially sacred studies, and who, confident in their certain natural eloquence, rashly ascend the pulpit with little or no preparation. With piety and Christian virtue, sacred knowledge must also be joined; for it has been clearly demonstrated, and continuously confirmed by experience, that truly wise, properly ordered, and fruitful preaching cannot be expected from those who are not instructed in good studies, especially sacred studies; and those who trust in a certain natural eloquence, without preparing themselves at all (or very little), ascend the pulpit. These people, for the most part, do nothing but beat the air, and, without realizing it, bring contempt and derision to the divine word; therefore, it must be said to them plainly: "For they beat the air, and, unknowingly, bring contempt and derision to the divine word; therefore, rightly and deservedly, that threatening word applies to them: 'Because you have rejected knowledge, I will reject you; because you have forgotten the law of your God, I will also reject you from my priesthood' (3)."

(1) 1 Corinthians 4:1.

(2) Commentary on Matthew 5.

(3) Hosea 4:6, as spoken: "Because you have rejected knowledge..."

[*Latin ed. p. 165*]

LETTERS CIRCULARS 165: I have repulsed you, and I will repel you from exercising the priesthood for me (Os. IV. 6). 2. Therefore, and not before, after the priest has acquired the aforementioned qualities, only the Most Reverend Bishops and Heads of the Regular Orders may entrust him with the great ministry of preaching the divine word; but they must diligently ensure that he adheres to those matters which are truly proper to the sacred preaching. Now, these matters are indicated by the Divine Redeemer when He says: "And he said to them: Go ye into the whole world

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and preach the gospel to every creature." (Mark 16:15). "Teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost" (Matthew 28:19). In accordance with these words, the Angelic Doctor wrote: "Preachers ought to enlighten in believing, direct in acting, and manifest what is to be avoided; and in various ways, by exhortation and by warning, they ought to preach salutary things to men" (cited above). And the most holy Council of Trent: "Announcing to them the vices which they ought to avoid, and the virtues which they ought to follow, that they may escape eternal punishment and attain to heavenly glory" (Session V, chapter 2, on Reform). But even more extensively, this was explained by the Supreme Pontiff Pius IX in the following words: "Not yourselves, but Christ Crucified, preach; the most holy dogmas and precepts of our religion, according to the doctrine of the Catholic Church and the..."

[*Latin ed. p. 166*]

166 L I T T E R A E E N C Y C L I C A e "shall proclaim the doctrine, with a grave and splendid manner of prayer, to the people, clearly and openly; they shall accurately explain the particular duties of each individual, and shall deter all from wickedness, inflaming them with piety, so that the faithful, nourished by the word of God, may reject all vices, pursue virtues, and thus escape eternal punishments and attain heavenly glory" (1). From this, it is clearly evident that the Creed, the Decalogue, the precepts of the Church, the Sacraments, virtues and vices, the various duties of men according to their condition, the last things of man, and other similar eternal truths, ought to form the ordinary matter of sacred preaching.

3. But these most serious matters are today undeservedly neglected by many preachers, who, seeking what is their own, and not what is of Jesus Christ (2), and knowing well that these are not the subjects most suited to gain them that popular favor which they aspire to, they entirely set them aside, especially during Lent and other solemn occasions; and together with these things, changing their names, they replace the ancient sermons with a certain ill-suited kind of lectures, aimed at captivating the mind and imagination, and never...

(1) Littera enc. 9 Nov. 1846.

(2) 1 Corinthians 13.

[*Latin ed. p. 167*]

ENCYCLICAL LETTERS serve to move the will and to reform customs. And these individuals do not recognize that moral sermons are beneficial to all, while conferences are usually for a few; and that these very few, if they were better instructed in morals, that is, if they were better helped to be more chaste, more humble, and more obedient to the authority of the Church, would have their minds cleared of a thousand prejudices against the faith, and be more ready to receive the light of truth; because

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religious errors, especially among Catholic peoples, generally have their roots more in the passions of the heart than in the aberrations of the mind, according to what is written: "For from the heart come forth evil thoughts, murders, adulteries, fornications, thefts, false testimonies, blasphemies." (Matt 15:19). Therefore, reflecting on the words of the Psalm: "The fool hath said in his heart: There is no God" (Psalm 13:1), Saint Augustine wisely observes: "In his heart, not in his mind."

167. A certain new kind of preaching is sufficient, which they falsely call moral discussions; by which the minds, or rather the imaginations, of the listeners are pleasantly entertained, but the will is not healthily moved, nor are morals rightly reformed. These individuals do not realize that moral sermons are indeed beneficial to all, while polemical conferences are usually beneficial to only a few; and that these very few, if they were more carefully instructed in good morals, or if they were more diligently helped to be endowed with greater chastity, humility of mind, and obedience to the authority of the Church, this alone would be sufficient to make their minds immune to countless errors against the Faith, and more ready to receive the light of truth; for errors concerning religion, especially among Catholic peoples, generally originate more from unrestrained desires of the mind than from any aberrations of the mind, as is written: "For from the heart come forth evil thoughts, murders, adulteries, fornications, thefts, false testimonies, blasphemies..." (Matt 15:19). And in Psalm 13, verse 1, it says: "The fool hath said in his heart: There is no God." "In his heart," says the Royal Psalmist (and Saint Augustine wisely notes this here), "not in his mind."

4. Nor do we therefore believe that the use of conferences should be absolutely condemned, for indeed, when they are properly conducted, they are also very useful.

[*Latin ed. p. 168*]

168 Encyclical letters, indeed even those that seem necessary in certain cases, can be most useful and necessary to refute errors against the Religion, amidst so many errors that are spread abroad, and sometimes they can be effective. But it is entirely fitting that Christians, who are devoted to the religion, should guard against those empty vanities, and should utterly reject from the pulpit those pompous pronouncements, which treat of matters more theoretical than practical; of civil matters rather than religious; more of appearance than of fruit, which are, in other words, of the species rather than the fruit; which, therefore, are perhaps suitable for the journalistic arena and for academic halls, but are certainly not suitable for the holy place. As for those discussions, which concern the defense of the Religion against the attacks of its enemies, they are indeed sometimes necessary, but this is a burden not for every number, but only for the strongest. Even the most valiant orators must use great prudence in this regard; for such

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defenses should only be made in those places, at those times, and before those audiences, which truly need them, and from which a real benefit can be hoped; of which matter, it is manifest that the Ordinary judges are more competent than all others: they must be made in such a way that the demonstration is clearly based on sacred doctrine rather than on human or natural arguments; they must be prepared with such wisdom and clarity, so that the danger is avoided, lest more errors remain imprinted in the minds of some of the audience, than the opposed truths, but rather that the objections are more easily overcome than the answers. Above all, it must be kept in mind that the use of

[*Latin ed. p. 169*]

LETTERS, 169. The excessive use of conferences should not cause moral sermons to fall into disrepute and disuse, as if these were matters of secondary importance and of lesser value than polemics, and therefore to be left to the common preachers and listeners; whereas, in truth, moral preaching is the most necessary for the entire body of the faithful, and is no less noble than polemics, and therefore even the most skilled and celebrated orators, and before any audience, however select and numerous, should, at least from time to time, treat it with lively zeal. If this is not done, these large audiences will always be hearing about errors that are often not present in the majority of those who are present, and never about the vices and sins that are likely to abound in such gatherings more than in others of lesser importance. "For it is the things presented that probe the mind, more than the responses." In particular, care must be taken that the frequent use of these conferences does not harm their reputation and does not diminish the desire for moral sermons, as if these were of a lower order and of lesser importance than polemics; and therefore to be left to the common preachers and listeners: whereas, on the contrary, it is quite clear that moral preaching is far more necessary for the entire body of the faithful, and is not surpassed in nobility by polemics; and therefore even the most skilled and celebrated orators should, before any audience, however select and numerous, practice this at least sometimes with sincere zeal. If this is not done, these frequent audiences will always hear discussions about errors that are often not present in the number of those who are present; never, however, about the sins and vices, which are likely to abound in these audiences more than perhaps in others, which are more common.

5. But if abuses are noted in the choice of topics, others no less serious are to be deplored in the manner of treatment, concerning which the most excellent Aquinas teaches admirably: "That the preacher of the divine word may truly be 'the light of the world,' he must have three things: first, stability, so that he does not deviate from the truth; second, clarity, so that he

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does not teach obscurely; third, usefulness, so that he seeks..."

[*Latin ed. p. 170*]

170 The praises of God, and not of oneself (1). But, alas, the form of many modern sermons is not only far removed from that clarity and simplicity which the Gospel should possess, but is entirely enveloped in obscure ambiguities and in matters too abstract for the common understanding of the people, and it brings to mind that pitiful lament: "The little ones asked for bread, and there was none to break it to them" (2). What is worse is that they often lack that sacred imprint, that breath of Christian piety, and that unction of the Holy Spirit, by which the herald of the Gospel should always be able to say of himself: "And my speech and my preaching was not in the persuasive words of human wisdom, but in shewing of the Spirit and power" (3). Instead, these rely almost solely on persuasive words of human wisdom, and care little or nothing for the divine word, for the Sacred Scripture, which should nevertheless be the primary source of sacred eloquence, as the Supreme Pontiff, now happily reigning, recently taught, with very weighty words which we believe it is appropriate to repeat. "This proper and singular virtue of the Scriptures, brought forth by the divine inspiration of the Holy Spirit, is what adds authority to the sacred orator, grants him the freedom of speaking in an apostolic manner, so that he may not teach with obscurity; thirdly, there is the usefulness (or right intention), so that he may seek the praise of God, and not his own." But alas! What a sad misfortune! The form of most sermons today is not only far removed from the evangelical clarity and simplicity which it should constantly possess; but it is also entirely enveloped in obscure ambiguities, and deals in abstract arguments, exceeding the common understanding of the people, so that that prophetic utterance, which it is appropriate to repeat here, comes to mind: "The little ones asked for bread, and there was none to break it to them" (Thren. I V, 4). What is worse, that divine character is lacking in sermons, that habit of Christian piety, that unction of the Holy Spirit, by which the herald of the Gospel should always be able to declare of himself, and should: "And my speech and my preaching was not in the persuasive words of human wisdom, but in shewing of the Spirit and power" (1 Corinthians II, 4). Instead, these, relying almost solely on persuasive words of human wisdom, pay little or no attention to the word of God, to the Sacred Scripture, which should indeed be the principal source of sacred eloquence: as the Supreme Pontiff, seated above the Chair of Peter, recently taught, with very weighty words which we believe it is appropriate to repeat.

[*Latin ed. p. 171*]

Encyclical letters impart a victorious and powerful eloquence. For whoever conveys the spirit and strength of the divine word in speaking, he does

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not speak merely in words, but also with power, and with the Holy Spirit, and with much conviction (1). Therefore, it is most foolish and imprudent for those to give sermons on religion, and to enunciate divine precepts, and yet to offer nothing but the words of human knowledge and prudence, relying more on their own arguments than on divine ones. Indeed, the prayer of these people, however brilliant it may seem, must necessarily languish and grow cold, because it lacks the fire of the word of God, and is far removed from that power with which the divine word is endowed: For the word of God is living and effectual and more piercing than any two edged sword; and reaching unto the division of the soul and the spirit, of the joints also and the marrow: and is a discerner of the thoughts and intents of the heart (2). Although this must also be conceded by the more prudent, that there is wonderfully varied and abundant, and of great worth, eloquence contained in the sacred Scriptures: which Augustine perceived and clearly demonstrated (3), and which is confirmed by the fact that the most excellent of sacred orators have affirmed that they owe their name primarily to their constant familiarity with the Scriptures and to pious meditation (4).

171 cebat: (In Encycl. De Stud. S. Script. 18 Nov. 1893.)

"This 'proper and singular power of the Sacred Scriptures, which proceeds from the divine inspiration of the Holy Spirit, is what adds authority to the sacred orator, grants him the freedom of apostolic speech, and imparts a vigorous, victorious eloquence. For whoever conveys the spirit and strength of the divine word in speaking, he does not speak merely in words, but also with power, and with the Holy Spirit, and with much conviction (1 Thessalonians 1:5). Therefore, it is most foolish and imprudent for those to give sermons on religion, and to enunciate divine precepts, and yet to offer nothing but the words of human knowledge and prudence, relying more on their own arguments than on divine ones. Indeed, the prayer of these people, however brilliant it may seem, must necessarily languish and grow cold, because it lacks the fire of the word of God, and is far removed from that power with which the divine word is endowed: For the word of God is living and effectual and more piercing than any two edged sword; and reaching unto the division of the soul and the spirit, of the joints also and the marrow: and is a discerner of the thoughts and intents of the heart (Hebrews 4:12). Although this must also be conceded by the more prudent, that there is wonderfully varied and abundant, and of great worth, eloquence contained in the sacred Scriptures..."

(1) 1 Thessalonians 1:5.

(2) Hebrews 4:12.

(3) De Doctr. christ. IV. 6, 7.

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(4) Litt. enc. de studiis Script. S. 18 Nov. 1893.

[*Latin ed. p. 172*]

5. Encyclical letters demonstrate this eloquence, which Augustine foresaw and eloquently argued (De Doctr. Chr. I, V, 6, 7), and the very fact confirms it, as the testimony of the most outstanding orators shows, who have consistently affirmed that they owe their name primarily to the study of the Holy Scriptures and pious meditation, Deo grati. 6. Therefore, the principal source of sacred eloquence is the Holy Bible. But these modern preachers, instead of drawing their eloquence from the fountain of living water, with intolerable abuse, turn to the dissipated cisterns of human wisdom: instead of bringing forth the texts divinely inspired, or those of the Saints and the Councils, they cite to excess profane authors, modern authors, and even living authors, whose words are often susceptible to very ambiguous and very dangerous interpretations. "It is also a great abuse of sacred eloquence to treat religious themes solely in the interest of this life, and not to speak of the future: to enumerate the advantages brought to society by the Christian religion, and to conceal the duties; to depict the divine Redeemer as entirely charity, and to pass over in silence His justice. Hence, the meager fruit of this kind of preaching, from which a man of the world emerges convinced that, without changing his customs, if he simply says: 'I believe in Jesus Christ...' 6. Therefore, the most powerful source of sacred eloquence is the Holy Bible. But these heralds of the Gospel, imbued with the ideas and customs of our time, commit the greatest sacrilege by drawing their eloquence not from the fountain of living water, but from the dissipated cisterns of human wisdom: instead of bringing forth the sentiments of the sacred books divinely inspired, or of the holy Fathers, or of the Councils, they adduce a great number of authors, and often profane, modern, and even living ones; whose statements often admit of ambiguous interpretations, and sometimes even very dangerous ones. "It is also a very bad abuse of sacred eloquence to treat religious themes solely for the reasons of this life, without even mentioning the future, to widely proclaim: to enumerate the advantages conferred on the world by the Christian religion, and to conceal the duties; to depict the divine Redeemer as an excellent *caritas*, and to pass over in silence His eternal justice. "Hence, the meager fruit of this kind of preaching: from which a man of the world emerges convinced that, without changing his customs, if he simply says: 'I believe in Jesus Christ...'

[*Latin ed. p. 173*]

LETTERS: "He will be a good Christian." But what do these people care about the fruit? This is not what they seek primarily: they seek to flatter their listeners, who are eager to hear pleasant things (2 Timothy 4:3), and as long as they see the churches filled, they do not care that souls remain

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empty. Therefore, they never speak of sin, nor of the last things, nor of other very serious truths that might lead the listeners to repentance (2 Corinthians 7:9); but they speak only of pleasing things (Isaiah 30:10), and they do so with an eloquence that is more like a courtroom than an apostolic one, more profane than sacred, which earns them applause and cheers, a practice severely condemned by St. Jerome when he wrote to Nepotian: "When you teach in the Church, let not the clamor of the people be raised, but let sighs be stirred up; let the tears of the listeners be your praise." Thus, their preaching appears, both in the church and outside of it, to be surrounded by a certain theatrical aura, which strips it of all sacredness and supernatural effectiveness. Hence, in the people, and we must also say in a part of the clergy, there is a perversion of the taste for the divine word, a scandal to all the good, and a very small, if any, benefit to the lost or unbelievers; who, although sometimes they flock in crowds to hear such pleasing things, especially if they attract attention.

[*Latin ed. p. 174*]

174 ENCYCLICAL LETTERS, filled with the resounding words of progress, of homeland, of modern science, after having loudly applauded the speaker who knows the true way of preaching, exit the church as they entered: "they marvel, but they do not convert," lacking all spiritual efficacy. Furthermore, in the people, and even in many of the clergy, there is a depraved taste for the divine word, and a palate that has become corrupted; hence, finally, the scandal of the righteous, while the perverse and the unbelieving are not amended in any way, or only in a small way. For although sometimes they come to the temples, attracted by such words and magnificent names as civil progress, homeland, the recent science of our times, and other similar things, and after having followed the speaker with enthusiastic applause, oh! this is the true and legitimate way of preaching! They go forth as they entered, just as the Jews, "who all indeed marveled, but not all converted." (St. Matthew 19:15).

7. Therefore, wishing to provide a remedy for so many and such deplorable abuses, in fulfillment of the venerated commands of the Holy Father, this Holy Congregation addresses itself to all the Most Reverend Bishops and Superiors General of the Religious Orders and pious institutes, urging them to rise up against these abuses with apostolic firmness and to diligently strive for their eradication. Let them remember that, according to the prescription of the Most Holy Council of Trent, men suitable for this purpose must be...

[*Latin ed. p. 175*]

Letters of this kind are to be held responsible for assuming the office of such preaching (1). The Council of Trent, in its decree (Session V, chapter 2, concerning Reform), prescribes and urges caution. If these concern priests

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who are suitable to assume the office of such preaching within their diocese, they must be steadfast in adhering to the utmost diligence in this matter, and they must take the greatest care not to entrust such an august ministry to anyone without first testing them, either through examination or in another suitable manner: unless they have been previously proven in their life, their knowledge, and their morals (2). If these concern priests from other dioceses, they must not accept anyone to preach within their own diocese, especially on more solemn occasions, unless they have been thoroughly tested in their life, their knowledge, and their morals, either through examination or by some other appropriate means (Council of Trent, loc. cit.). They must not entrust them with this ministry unless they present letters from their own Bishop or their own Superior Regular, which give a good testimony of their customs and their suitability for such an office. Furthermore, Superiors of Religious Orders, Societies, or Congregations must not allow any of their subjects to preach unless they have first obtained letters from their own Bishop, or from the Prelate, which testify that the priest is endowed with good morals and is indeed suitable for this office. They must, moreover, allow this much less on solemn occasions. General Ordinaries of any Religious Order, Society, or Congregation must, if they have not first assured themselves publicly of the good conduct and moral standing of those under their jurisdiction, and of their proper manner of proclaiming the divine word, inform the local Bishop; otherwise, they must not allow such priests to preach. But if the Ordinaries, after accepting some preacher based on the good recommendations he presented, later observe that he deviates from the norms and warnings given in these Letters in the practical exercise of the ministry, they must promptly call him back to duty; but if this is not sufficient, they must remove him. If the Bishop of any diocese, after having accepted a priest, observes that he deviates from the norms and warnings given in these Letters in the practical exercise of the ministry, and that he does not conform to the customary manner of preaching, he must promptly call him back to duty; but if this is not sufficient, he must remove him.

(1) Session V, chapter 2, De reform.

(2) Loc. cit.

[*Latin ed. p. 176*]

176 Encyclical letters are issued directly from this office, and even canonical penalties are applied, if the nature of the case requires it. If, however, someone entrusted with this duty, namely, a priest, has been commended by his superiors to preach the word of God in his own diocese, and is subsequently observed to deviate from the norms and admonitions laid down by us, he should first be duly admonished, so that, if possible, he may correct himself; and if this is not sufficient, he should be immediately removed from office, and even subjected to canonical penalties, if necessity

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demands. Furthermore, since this Holy Congregation knows that it can rely on the diligence and zeal of the Most Reverend Ordinaries and Heads of Religious Orders, it is confident that, primarily through their efforts, this modern manner of proclaiming, or rather, adulterating, the divine word will soon be reformed, and that, once worldly vanities have finally been removed from the sacred preaching, its native majesty and reverence will be restored to it, along with its supernatural efficacy, for the glory of God, for the salvation of souls, and for the universal benefit of the Church and the world. Moreover, since this Holy Congregation rightly knows that it can safely trust in the diligence and zeal of the Roman Bishops and of any superiors of Religious Orders, therefore it confidently expects that, primarily through them, this new and recent method of proclaiming, or rather, adulterating, the word of God will soon reveal itself to be reformed; and that the sacred preaching itself, freed from the vanities of empty words, will once again receive its august and native splendor, and its supernatural efficacy, for the praise of God, for the eternal salvation of souls, and for the spiritual benefit of the entire Church and the whole Christian world. Rome, from the Secretariat of the Holy Congregation of Bishops and Regular Canons, July 31, 1894. Rome: from the office of the Scribes of the Sacred Congregation of Bishops and Regular Canons, entrusted with the dispatch of matters: on the 31st of July, in the year 1894. Isidoro Cardinal Luigi VERGA, Prefect. Aloysius Trombetta, Pro-Secretary.

[*Latin ed. p. 177*]

177 ENCYCLICAL LETTER from His Holiness Pope Leo XIII to the Patriarchs, Primates, Archbishops, Bishops, and other Ordinary places having peace and communion with the Apostolic See, concerning the Feast of the Most Holy Rosary. We behold the month of October returning, always with joyful expectation and elevated hope; a month which, by Our exhortation and decree, has been dedicated for many years to the Most Blessed Virgin, and in which the devotion to the ROSARY flourishes with vigor among the Catholic peoples. We have not hesitated to urge this cause, for when the times of the Church and of the nations are calamitous, and demand the most urgent help from God, We have considered it necessary to implore this, namely, through the intercession of Her who is His Mother, and to strive especially with that form of prayer, whose power the Christian people have never found to be anything but salutary. For they have experienced this from the very origin of the Rosary, in defending the faith against the wicked attacks of heretical men, and in the harmonious praise of virtues, which throughout the ages has been necessary to counteract corrupt examples, and to sustain what is good; and they have experienced it privately and publicly through the course of benefits, the memory of which is consecrated everywhere by illustrious institutions and monuments. Similarly, in our own age, which is laboring under a multitude of difficulties, we recall

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the salutary fruits that have come from it: nevertheless, Venerable Brothers, you yourselves see that the causes still persist and are growing worse, and therefore, let the ardor of beseeching the Heavenly Queen be kindled this year as well, by Our exhortation, in your flocks. — It is fitting that, because those who are deficient in thought concerning the intimate nature of the Rosary, the more illustrious its excellence and benefits appear to Us, the more our desire and hope is increased, that Our recommendation may so succeed that the most sacred devotion to it, increased in the minds of men by knowledge and amplified by custom, may flourish with the best growth. For this purpose, We shall not repeat what We have already published in previous years on various matters of the same kind: rather, it occurs to Us to consider and teach what will make the excellence of the divine plan manifest, so that, through the Rosary, confidence in obtaining graces may flow sweetly into the hearts of the praying, and the merciful compassion of the most loving Virgin Mother may respond with the greatest benevolence to those who seek her help. Acts, Vol. XXVII, page CCCXV, 12.

[*Latin ed. p. 178*]

178 ENCYCLICAL LETTER: That we seek the protection of Mary through prayer, this is certainly, and indeed fundamentally, based on the role she plays in obtaining divine grace for us, a role which she continuously fulfills before God, with the utmost acceptance and merit, far surpassing all the saints in Heaven in power. This role is perhaps most clearly expressed in no other form of prayer than in the Rosary: in which the events of the Virgin's life, undertaken for the salvation of mankind, are so vividly presented as to have an extraordinary benefit for piety, whether in contemplating the sacred mysteries or in reciting pious prayers with the mouth. — First come the mysteries of JOY. The eternal Son of God becomes man, inclining Himself towards humanity; and Mary, with the consent of God, conceives Him in the Holy Spirit. Then, John is sanctified in the womb, receiving a special grace, and is instructed in the gifts necessary to prepare the way of the Lord; these things happen through the greeting of Mary, who, filled with divine inspiration, foresees her kinship. Finally, Christ, the hope of the nations, is born of the Virgin; and shepherds and wise men, the first fruits of faith, hasten to find the Infant with Mary, His Mother. Then, in order to offer Himself as a sacrifice to God the Father in a public manner, He wishes to be brought to the temple; and in the service of His Mother, He is presented to the Lord. There, in the secret disappearance of the Child, she seeks Him with anxious concern and finds Him with great joy. — And so, too, the mysteries of SORROW speak. In the Garden of Gethsemane, where Jesus fears and grieves at the prospect of death, and in the praetorium, where He is scourged, crowned with thorns, and subjected to torture, Mary is not present; yet she has long known and foreseen these things. For when she offered herself to God

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as a handmaid, fulfilling the office of a mother, or when she dedicated herself completely with her Son in the temple, she was already, through these actions, a partner with Him in the laborious work of expiation for the human race; and therefore, it is not to be doubted that she felt the greatest compassion in the most grievous sufferings and torments of her Son. Moreover, with her present and witnessing, that divine sacrifice had to be completed, for which she had generously nourished the victim; and in these same mysteries, the sorrow is even more poignant: "Near the cross stood her mother, Mary, and her other mother, Salome. But while there were many women looking on from a distance." She offered her own Son willingly to divine justice, sharing His suffering with a contrite heart, pierced by the sword of sorrow. — Finally, in the mysteries of GLORY, the same great Virgin's most benevolent role is confirmed, and is even more abundantly evident. The glory of the Son proceeds from death.

[*Latin ed. p. 179*]

ENCYCLICAL LETTER 179: The triumphant joy is mingled with silent longing; but the Mother, with maternal affection, follows after, and, worthy of heaven, she is held here on earth, the best comforter and teacher of the nascent Church, who has penetrated the depths of divine wisdom, beyond what can be believed (1). For the sacrament of human redemption will not be perfected until the promised Spirit of Christ has come; therefore, they contemplate her in the memorable Cenacle, where, together with the Apostles, she implores, with unspeakable groaning, the Paraclete, thereby maturing the fullness of the Spirit for the Church, the supreme gift of Christ, a treasure that will never fail. But with her constant and perpetual intercession, she will advance our cause to the immortal ages. Indeed, from the sorrowful valley she is carried to the holy city of Jerusalem, surrounded by choirs of angels; and we venerate her in the glory of the Saints, who, adorned with a radiant diadem bestowed by the Son of God, sits as Queen and Lady of all, with Him. These things, Venerable Brothers, in which the plan of God is revealed, the plan of wisdom, the plan of piety (2), and at the same time, the immense merits of the Virgin Mother shine forth, and cannot fail to pleasantly affect anyone, instilling certain hope of obtaining the administration of divine clemency and mercy through Mary. This is also what is fitting, harmonizing with the mysteries, namely, the vocal prayer. It precedes, as is fitting, the Sunday prayer to the Father of heaven: through which, after having invoked Him with the most excellent petitions, His supplicating voice is turned to Mary; for there is no other law of reconciliation and supplication than this, expressed by the holy Bernard of Siena in these words: "Every grace that is communicated to this world has a threefold process. For it is most orderly dispensed from God to Christ, from Christ to the Virgin, and from the Virgin to us" (3). With these steps, which, although different in reason, are arranged, we dwell more readily

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and, so to speak, more fully on this last part of the Rosary, continuing the angelic salutation in decades, as if to strive more confidently towards the other steps, that is, through Christ to God the Father. Thus, we pour forth that same salutation so many times to Mary, so that our weak and feeble prayer may be sustained by necessary confidence; we implore her to pray to God for us, as it were, in our name.

(1) St. Bernard, *de XII praerogativ. B. M. V.*, n. 3.

(2) St. Bernard, *serm. in Nativ. B. M. V.*, n. 6.

(3) *Serm. VI in festis B. M. V. de Annunc.,* a. I, s. 2.

[*Latin ed. p. 180*]

180 ENCYCLICAL LETTER. Our voices, indeed, gain great power and efficacy with Him, if they are accompanied by the prayers of the Virgin: for He Himself invites her with a most gracious invitation: "Let thy voice sound in my ears; for thy voice is sweet" (1). For this very reason, we repeatedly invoke those glorious names which are pleasing to her, in order to obtain [grace]. We salute her, who found grace with God, singularly filled with grace by Him, whose abundance flowed forth to all; she, to whom the Lord attached Himself with the greatest possible union, blessed among women, who alone bore the curse and carried the blessing (2), blessed fruit of her womb, in whom all nations shall be blessed: finally, we invoke her as the Mother of God; from this exalted dignity, what can she not certainly obtain for us sinners, what can we not hope for in every life and in the final struggle of the spirit? He who devotes himself to these prayers and mysteries with all diligence and faith, cannot but be transported with admiration at the divine counsels of the most holy Virgin, for the common salvation of the nations; and he will readily entrust himself to her protection and receive her into his bosom, almost with the very supplication of Saint Bernard: "Remember, O most pious Virgin Mary, that never has anyone been heard to have sought your protection, to have implored your help, to have asked for your intercession, and to have been rejected." But just as the power of the Rosary inspires confidence in those who pray, so too it possesses the power to move the Virgin to mercy in our hearts. It is manifest how pleasing it is to her to see and hear us, as we rightly and reverently recite the most beautiful praises in the form of a crown. For in thus praying, we render to God what is due and we desire His glory; we seek to perfect His will and purpose alone; we extol His goodness and munificence, and, as we humbly ask for these most excellent gifts, the Virgin is truly delighted, and truly magnifies the Lord in our piety. Indeed, we address God in a worthy manner when we address Him in the Our Father. — Moreover, to those things which we seek in this prayer, which are so upright and well-ordered, and so in harmony with Christian faith, hope, and charity, is added a certain weight, which is pleasing to the Virgin. For it seems that our voice is joined with the voice of Jesus Christ Himself; who uses the

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same form of prayer (1).

(1) Cant. II, 14.

(2) St. Thomas, op. VIII, super salut. angel. n. 8.

[*Latin ed. p. 181*]

ENCYCLICAL LETTER 181. "With these words, the author has transmitted and commanded that it be observed: 'Therefore, when you pray...' (1). Therefore, we are not to doubt that, with such an instruction, and observing the rite of the Rosary with the most willing heart, we will faithfully fulfill our duty, filled with solicitous love; and that, receiving these mystical prayers with such ease, we will receive a generous reward. — Indeed, in order that the most liberal goodness of God may more certainly be promised to us, there is a not insignificant reason within the very nature of the Rosary, for rightly praying. Many and varied things, which are the fragility of man, often distract the one who prays from God and overturn his faithful purpose; but he who considers the matter carefully will immediately see how much efficacy there is in it, both in directing the mind and in shaking off the distractions of the soul, and in arousing and leading the spirit to heavenly things. For, as is known, the Rosary consists of two things, distinct yet joined together: the meditation of mysteries and the recitation of prayers. — Therefore, this kind of prayer requires a certain attention from man; namely, that not only the mind be directed to God in some way, but that, when considering and contemplating things, one may also grasp the teachings of a better life and all the nourishment of piety. For there is nothing greater or more admirable than those things in which the sum of the Christian faith is contained; through whose light and power, truth and justice and peace have progressed, with a new order of things on earth and with the happiest of results. — This is connected with the fact that these very important things are presented to the cultivators of the Rosary; namely, in a way that is suitable for the understanding of both intelligent and less intelligent people. For it is arranged in such a way that, rather than presenting chapters of faith and doctrine to be considered, it is rather as if actions are presented to the eyes and to be remembered: which, happening in almost the same places, times, and with the same people, hold the minds more effectively and move them more usefully. 'Since these things are commonly given to the minds from a young age and impressed upon them, it happens that, with each mystery enunciated, whoever truly desires to pray, without any struggle of imagination, but with obvious thought and feeling, will pass through them abundantly, and will imbibe abundantly the dew of heavenly grace, bestowed by Mary. — Furthermore, there is another praise that makes these very prayers more acceptable to her and more worthy of reward. For the pious memory of three mysteries... (1)

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Matthew 6:9.

[*Latin ed. p. 182*]

182 ENCYCLICAL LETTER: We repeat, and from this, a greater testimony of our affection and will towards her exists; so that they may understand that we will never tire of remembering the benefits with which she has abundantly shown her charity towards us. But we can scarcely imagine the blessedness with which her soul is filled with the joy of *novae laetitiae*, and the feelings that are aroused in us by contemplating her maternal providence and beneficence. And from these very memories, it follows that our supplication should take on a more fervent ardor and power of entreaty: so that, as each mystery is recalled individually, so many arguments for supplication arise, certainly with the Virgin, who will surely value them greatly. Indeed, we flee to you, Holy Mother of God: do not despise the wretched sons of Eve! We implore you, Conciliatrix of our salvation, both powerful and merciful; we earnestly beseech you, through the sweetness of the joys received from Jesus, your Son, through the communion of his unspeakable sorrows, through the splendor of his glory which shines upon you, hear us, though unworthy, with kindness and grant our request. Therefore, Venerable Brothers, considering the preeminence of the Rosary, in both respects which we have praised, let it be made more evident why Our care does not cease to urge and promote the same. The world, as we have mentioned at the beginning, needs greater heavenly assistance every day; especially since there are many things that afflict the Church, her freedom and her rights being opposed; many things that undermine the prosperity and peace of Christian nations. Indeed, in obtaining these aids, we place our greatest hope in the Rosary, and we reaffirm and declare this again. May the ancient honor, according to our wishes, be restored to this holy devotion everywhere: let this be encouraged and practiced in cities and villages, in families and workshops, among the nobles and the common people, not otherwise than as a most excellent sign of Christian profession, and the best protection for obtaining divine mercy. Indeed, all must strive to promote this more and more, when the insane perversity of the wicked leaves nothing untouched, scheming and daring to provoke the wrath of the Divine Power and to draw down just punishment upon the homeland. Among other causes, it grieves us that there are too many, even within the bosom of Catholic nations, who rejoice in insults offered to religion in every way, and who, with an incredible license, spread all manner of things.

[*Latin ed. p. 183*]

ENCYCLICAL LETTER 183, in which they seem to be striving to bring about the very things that would cause the most sacred of her matters to be exposed, and to inspire a lack of trust and ridicule in the patronage

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of the Virgin. In these past months, even the august person of our Lord Jesus Christ, the Savior, has not been spared. They have not hesitated to drag her into the snares of the stage, which is already widely tainted with wickedness, and to represent her in a way that diminishes the divine nature itself; and if this majesty is taken away, then the very redemption of the human race must be undone. Nor have they hesitated to seek to tear a man from eternal infamy, a guilty party in crime and perfidy, whose wickedness is most detestable, a traitor to Christ, from the depths of human memory. To this, through the cities of Italy, either having been done or about to be done, universal indignation has been aroused, and the most sacred right of religion has been violated, and that in a people who, above all others, glory in the Catholic name. Then, as was fitting, the vigilance of the Bishops blazed forth: who presented most just remonstrances to them, urging that they ought to defend the dignity of the religion of the homeland, and not only warned their flocks of the gravity of the danger, but also encouraged them to make amends for this heinous disgrace to the most beloved Author of our salvation through singular acts of religious devotion. Certainly, we have seen the eagerness of good men, excellently demonstrated in many ways, and it has helped to alleviate the deep distress caused by this matter. And now, at this opportune time for speaking, we cannot restrain the voice of our highest office; and we join our own remonstrances with those of the Bishops and the faithful, and we express them with the utmost gravity. And with the same apostolic zeal with which we lament and condemn this sacrilegious act, we earnestly urge the Christian people, especially the Italians, to guard their ancestral religion inviolably, to defend it vigorously, and to ensure that they do not cease to increase it through honorable and pious deeds. Therefore, for this very reason, we earnestly desire that throughout the month of October, everyone and every association strive to honor the great Mother of God, the powerful Helper of the Christian cause, the glorious Heavenly Queen. We, for our part, most willingly confirm the sacred indulgences, which were previously granted in this very matter. May God, Venerable Brothers, who has provided for us such a Mediator with the most benign mercy (i), and who has provided for all of us (I). S. Bernard, on the Twelve Privileges of the B.V.M., no. 2.

[*Latin ed. p. 184*]

184. He wished to have Mary (1), through her intercession and grace, favor the common devotions, and increase hopes; with the blessing of the Apostolic benediction, which we impart to you yourselves and to your respective clergy and people in the Lord. Given in Rome, at St. Peter's, on the eighth day of September, in the seventeenth year of Our Pontificate. LEO XIII, POPE. "FROM THE SACRED CONGREGATION OF RITES, CASTELMARRE. Various Doubts. July 20, 1894. The current Editor of the diocesan Calendar of Castelmarre, at the mandate of his Most Reverend Bishop,

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has humbly submitted the following doubts to the Sacred Congregation of Rites for appropriate resolution, namely: Doubt I. In the city of Castelmarre, there exists a church dedicated to the Blessed Virgin Mary, called "of Succursu," as is evident from authentic documents, namely: from the instrument of foundation drawn up by a public Notary, from the inscription placed on the bell of the same church, and from the image of the same Virgin, placed under the same title, publicly exposed for the veneration of the faithful in the main altar. However, when the same church was solemnly consecrated, no mention was made of the aforementioned title of "Succursu," and it was dedicated to the Most Holy Names of Jesus and Mary; the question is whether the clergy of the city, devoted to the service of the same church, are obliged to celebrate, as titular, and under the rite of the Double Class with the octave, only the feast of the Most Holy Names of Jesus and Mary, or also the feast of the Blessed Virgin Mary of Succursu? Doubt II. When a Saint is celebrated in a church on a day other than his own, and, because of a special privilege granted by the Holy Apostolic See, the Mass is sung and the readings are read as on a feast day; in these Masses, should the Commemoration of the Office of the day be included? (1) St. Bernard, sermon on the Nativity of the B.V.M., no. 7.

[*Latin ed. p. 185*]

FROM THE SACRED CONGREGATION OF RITES, 185, Question III. The practice has become established in many churches of this city, in Marian functions and other ceremonies which are performed with the Mass, of dismissing the people with the Blessing of the Most Holy Sacrament reserved in the pyx, using a humeral veil over the pyx. It is asked whether this practice can be tolerated? And the Sacred Congregation, after considering the report of the undersigned Secretary, and after a careful vote of another of the Masters of the Apostolic Ceremonies, considered it fitting to respond to the aforementioned questions as follows: Regarding I. Affirmative, concerning the first part; Negative, concerning the second part. Regarding II. Deferred; in the meantime, the rubrics concerning processions should be observed. Regarding III. Affirmative; it should be observed in this manner. And thus it responded and ordered to be observed on July 20, 1894. C. CARDINAL ALOISI-MASELLA, Prefect. L. & S. ALOISIUS TRIPPEPI, Secretary. CARTHAGINE IN INDIA. Regarding the use of the mitre. July 20, 1894. The Reverend Peter Brioschi, General Vicar of the Diocese of Carthage in India, humbly submitted the following question to the Sacred Congregation of Rites for a suitable solution: Whenever a new Bishop is consecrated in the Diocese of Carthage, simple priests who, with the benevolent approval of the Holy See, assist the Bishop in the consecration, following the example of other dioceses, use a mitre. It is asked, whether this custom is to be tolerated? And the Sacred Congregation, after considering the report of the undersigned Secretary, and after a careful vote of another of the

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Masters of the Apostolic Ceremonies, considered it fitting to respond to the aforementioned question as follows: Negative. And thus it responded on July 20, 1894. C. L. CARDINAL ALOISI-MASELLA, Prefect. S. ALOISIUS TRIPPEPI, Secretary.

[*Latin ed. p. 186*]

FROM SACRED RITUALS 486, DECREE concerning the regulation of the cult of the Servants of God, who have not yet been declared blessed by the Apostolic See. August 14, 1894. Among the Constitutions of the Roman Pontiffs, and the Decrees of the Congregation of Sacred Rites, which have been published for the regulation of the cult of the Servants of God, who died with a reputation for sanctity or martyrdom, but who have not yet been declared blessed or saints by the Apostolic See, some pertain to the depiction of their images, whether in churches or in public oratories. Recently, the Apostolic Vicar of the Western District of Scotland had reported that these images were sometimes painted on stained glass, with which the windows of churches are decorated; the same Sacred Congregation, through a Decree issued on March 24, 1860, considered this practice to be by no means to be approved. However, since it is not uncommon for such images, and indeed for the deeds and actions of the Servants of God, or of prominent figures, or of any part thereof, to be depicted, not only on such stained glass, but also on the walls of churches; there has been doubt as to whether this prohibition also extends to such historical representations. Therefore, after the matter was subjected to careful examination, and after the opinions of distinguished men in Sacred Theology, and also in ecclesiastical Archaeology, were heard, the Sacred Congregation of Sacred Rites, with the undersigned Cardinal Prefect referring to the matter, in Ordinary Sessions, held on the date indicated at the Vatican, decided that: "The images of men and women who died with a reputation for sanctity, but who have not yet received the honors of Beatification or Canonization, cannot be placed in any way on the altars, nor can they be painted with halos, rays, or other signs of sanctity; however, their images, or their deeds and actions, can be exhibited on the walls of the Church, or on stained glass, provided that those images do not suggest any indication of cult or sanctity, nor do they contain anything profane or foreign to the customs of the Church." August 14, 1894. After I, the undersigned Cardinal Prefect, subsequently reported to His Most Holy Lord Leo XIII, Pope, concerning the aforementioned matters, the same Most Holy Lord approved and confirmed the opinion of the Sacred Congregation, and thus decreed.

[*Latin ed. p. 187*]

From the Sacred Congregation of Rites, number 187, it was ordered that those things which seem to be contrary should be understood. On the 27th of the same month and year. G. L. *CARDINAL ALOISI-MASELLA, Pre-

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fect of the Sacred Roman Congregation. S. ALOISIUS TRIPEPI, Secretary of the Sacred Roman Congregation. GENERAL DECREE. Concerning the method of making the solemn profession of vows. On August 14, 1894. It has not been infrequently examined by the Sacred Congregation of Rites: Whether, and how, the solemn profession of vows, or their renewal, which takes place in most religious congregations of both men and women, can be performed within the Mass. Furthermore, in particular cases, the reason for the response has not always been the same, and yet a general decree on this matter has never been issued. Therefore, in order to remove all ambiguity and to introduce uniformity, the same Sacred Congregation of Rites, with the aforementioned Cardinal as Prefect, after careful consideration of all things, and especially those contained in the Bull *s. m.* of Pope Gregory XIII, entitled "Quanto fructuosius," issued on the Kalends of February in the year 1583, for the approval of the Constitutions of the Society of Jesus, and signed in the Ordinary Assemblies held in Vatican, has established the following method, which must be observed: "The celebrant, having taken the most holy Sacrament of the Eucharist, and after absolute confession, and with the words which are usually said before the Communion of the faithful, holding the Sacred Host in his hand, shall turn to those who are making their vows: these, in turn, shall read their profession aloud, and after each has read, they shall immediately receive the most holy Sacrament of the Eucharist. In the renewal of vows, the celebrant, having turned to the altar, shall wait until those who are renewing their vows have presented the formula; those who are renewing, unless there are only a few, shall all together, with one leading, recite the formula of renewal, and then, in order, shall receive the most holy Body of the Lord. However, this method, once accepted, must not be included in the Constitutions of the respective congregations." Notwithstanding any particular decrees issued in this regard.

[*Latin ed. p. 188*]

188 Concerning those customs which are entirely to be restored and abrogated. August 14, 1894. The Most Holy Sovereign Pontiff, Pope Leo XIII, having received from me, the undersigned Cardinal Prefect, a report on the aforementioned matters, approved the judgment of the Sacred Congregation, declared it valid, and declared that all decrees contrary to it are, for the present, entirely abrogated. August 27, of the same month and year. CAL CARD. ALOISIUS MASELLA, Prefect of the Sacred Roman Congregation. L. * S. SECRETARY. ALOISIUS TRIPEPI. DECREE concerning a doubt regarding major and minor feasts. August 14, 1894. After the publication of the General Decree concerning major and minor feasts, and their catalogue, a doubt was raised in the Sacred Congregation of Rites, as to whether the precedence given to major feasts over minor feasts applies only to the Doubles of the first and second class, and to greater Doubles, or also to lesser

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Doubles and Semidoubles? Therefore, in the Ordinary Congregations, held on the date indicated at Vatican, the undersigned Cardinal, Prefect of the same Sacred Congregation, proposed the following doubt: Does the distinction between major and minor feasts, by virtue of the General Decree of July 2, 1893, apply only to the Doubles of the first and second class, and to greater Doubles; or also to lesser Doubles and Semidoubles, both in their proper time, and when they occur on the same day, and when they are transferred? And the Sacred Congregation, after mature deliberation, decided that: Negatively, to the first part; Affirmatively, to the second part; and that all particular decrees contrary to the aforementioned General Decree are to be considered revoked, and shall have no validity. August 14, 1894. C. L. * CARD. ALOISIUS MASELLA, Prefect of the Sacred Roman Congregation. S. ALOISIUS TRIPEPI, Secretary.

[*Latin ed. p. 189*]

FROM THE SACRED CONGREGATION OF RITES, concerning the feast of the Most Holy Heart of Jesus. August 14, 1894. In the catalogue of feasts, which according to the Decree of August 27, 1893, are to be observed as primary or secondary, the feast of the Most Sacred Heart of Jesus was listed among the secondary. Therefore, a doubt was raised in the Congregation of Sacred Rites, as to whether this Decree had repealed the other General Decree of June 28, 1889, and if so, in what manner. The Sacred Congregation, after being convened in ordinary sessions at the Vatican, with the undersigned Cardinal, Prefect, present, and after mature deliberation, decided to respond: Affirmative, and the feast of the Most Sacred Heart of Jesus, being a secondary feast, must yield to all Double feasts of the first class, both in anticipation, and in concurrence, and in deferral. Furthermore, since the feast of the Translation of Saint Joseph, a Double of the first class, has also been ordered according to the norm of the same feast of the Sacred Heart, other Double feasts of the first class, provided they are primary, must be given precedence over it, both in anticipation, and in concurrence, and in deferral. The same must be observed concerning the feast of the Translation of the Nativity of Saint John the Baptist and the Annunciation of the Most Holy Virgin, unless this is transferred together with the precept of hearing the Sacred Liturgy, according to the Decree in Aquileia, of September 2, 1741. And thus it was declared and decreed on August 14, 1894. C. CARD. ALOISIUS - MASELLA, Prefect of the S. C. R. * S. ALOISIUS TRIPEPI, Secretary, ANGELOPOLITANA. Doubts concerning the Ceremonial Observance of Bishops. August 17, 1894. The current General Vicar of the Diocese of ANGELOPOLITANA, who is also the Archdeacon of that Cathedral Church, states that for two years, the prescriptions observed in the Ceremonial Vespers of Bishops have been as follows, and humbly submits the following doubt to the Sacred Congregation of Rites for a suitable solution: Whereas it was once customary for the capitulars

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to wear rain cloaks at the Vespers, while performing the office of deacons; it was established that those receiving the portion for the diaconal office, should perform their office at the Vespers: for the reduction of ecclesiastical goods is a small benefit for the beneficiaries.

[*Latin ed. p. 190*]

190 From the Sacred Congregation of Rites, the question is posed: Those who cannot be excused from their duties, such as those who must attend the weekly solemn Vespers, are concerned. Therefore, the following is asked: I. Did the Archdeacon and Chapter act correctly in establishing the observance of the Ceremonial of Bishops in divine offices, especially concerning the solemn Vespers? And, consequently, does such a method of acting deserve the approval of the Sacred Congregation of Rites? II. Can the old custom continue, whereby four or six canons accompany the deacons weekly to fulfill their office? III. To the extent that it is negative; because canons and dignitaries are prohibited by various decrees of the Sacred Congregation from performing the duties of deacons, since their benefices are not diaconal, but priestly; and also because in this Church, canons alone perform the diaconal office for the Bishop; can those who enjoy diaconal privileges and do not belong to the rank of canons be compelled to perform the duties of deacons in divine offices, especially in the more solemn Vespers? IV. Since the choir is located a distance from the main altar, as stated by De Herdt in this case, can the hebdomadarius and those assisting, while proceeding from the choir to the main altar to incense during the Magnificat, walk with their heads covered? V. Since the distance from the choir to the sacristy where the Most Holy Eucharist is reserved is greater, and since ascending to it involves climbing three steps, which is difficult for the elderly, can the incense offering of the Most Holy Sacrament be omitted, as has been done in the past? And to the extent that it is negative, can this be permitted, considering the circumstances, by special grace? And the Sacred Congregation, after mature deliberation on the aforementioned report from the secretary and the fervent request of another from the Masters of the Apostolic Ceremonies, decided to respond to the questions posed as follows: To I. Regarding the observance of the Ceremonial of Bishops, all churches must adhere to it, especially metropolitan cathedrals and collegiate churches. To II and III. The Ceremonial of Bishops must be observed. To IV. The custom must be observed. To V. Affirmative; unless the Most Holy Sacrament is solemnly exposed. And thus it responded and ordered to be observed on August 17, 1894. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Roman Congregation. L. S. ALOISIUS TRIPEPI, Secretary.

[*Latin ed. p. 191*]

191 APPENDIX II: DOCUMENTS FROM THE APOSTOLIC SEE;

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WHICH HAVE BEEN EITHER LONG ESTABLISHED OR RECENTLY ISSUED, CONCERNING THE MODERATOR OF THE EPHEMERIDES.

Sacred Congregation of the Propagation of the Faith – Congregation for the Eastern Churches. April 1, 1861. Bardstowo (Louisville). Doubt concerning a tax to be applied while a matrimonial dispensation is granted. Whether it is licit to request or demand a tax or contribution to be applied for the construction of new churches, monasteries, and other pious causes, while a certain dispensation, for example, in marriages with relatives, is granted, and this in the manner of alms, satisfaction, etc.

Reply: It is permissible only in the manner of alms, excluding any tax.

Sacred Congregation of the Holy Office. January 13, 1869. Concerning the profession of faith to be made by Bulgarians converted to the faith. Since, on the occasion of the conversion to the Catholic faith of certain Bulgarians, and from what has been reported concerning this matter by the Most Reverend Apostolic Vicar of Constantinople, some doubts have arisen regarding the manner in which these individuals should be reconciled, and the formula of the profession of faith to be extracted from them, the following questions have been proposed to the Sacred Congregation of the Holy Office for consideration:

1. Whether schismatics who are ignorant and simple, after having made the profession of faith, ought to be absolved simply, or under a condition.

2. In what formula this absolution should be granted.

3. In what language this same absolution should be given by Bulgarian priests.

4. Whether those Bulgarian schismatics, who, without having made the profession of faith...

[*Latin ed. p. 192*]

192 APPENDIX II. Those who, without having been absolved from censure, have already been admitted to the participation of the Sacraments, must make a profession of faith, and receive absolution before being again admitted to receiving the Sacraments. 5. Whether the profession of faith formulated by the Bishop of Chios should be approved...

The Most Eminent and Reverend Fathers have decreed as follows, namely:

To 1. In the case of Eastern schismatics, whether Bulgarian or others, even the simple, who are to be reconciled by the Western Church, absolution must be granted to them, provided that they are absolved according to the formula of absolution of the Holy Office. In the case, however, of these Eastern Christians being reconciled according to the Eastern liturgy, application must be made to the Most Holy Lord that, for the present, nothing be innovated, and that an absolution implicitly and indirectly given may be considered valid, which must be understood in the very rite of

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reconciliation itself.

To 2. In the case of Bulgarians or other Slavs, who are reconciled by the Holy Congregation of the Sacred Council or by someone specially appointed from the Latin rite, the rite must be performed, and absolution granted according to that formula which is usually used by the same Holy Congregation of the Sacred Council, or according to the formula prescribed by the Roman Pontifical for reconciling heretics and schismatics.

To 3. As provided in 1.

To 4. Bulgarians, in the case mentioned, who have already been received into communion with the Church, are not to be compelled to make a profession of faith, nor subjected to the rite of reconciliation before they are again admitted to the reception of the Sacraments.

To 5. The Nicene Creed must be recited purely and simply, as it is read in the formula of the profession of faith of Urban VIII, with some additions according to the meaning, as follows, and that only for the simple and uneducated, while firm formulas of Gregory XIII and Urban VIII are to be used for learned and instructed persons.

[*Latin ed. p. 193*]

193 APPENDIX II. From the Sacred Congregation of the Holy Office, July 21, 1880. — Regarding the Vicariate Apostolic of Bengal. Doubts concerning the admission to the profession of the Faith, etc.

1. Can a girl of ten years of age, residing in a monastery, be safely admitted to the profession of the Catholic Faith, even against the will of her heretical father?

2. Can girls residing in a monastery be safely admitted to the profession of the Catholic Faith, when their parents, who are heretics, consent to it, and even promise to give them in marriage to Catholics, although they declare themselves to be heretics and intend to remain so?

3. Can girls (as in the preceding question) be safely admitted to the profession of the Catholic Faith, even though their parents are not Catholics, but are indifferent, that is, unbelievers?

4. Should girls who are presently well-disposed be admitted without delay to the profession of the Catholic Faith and the reception of the Sacraments, or should their admission be postponed until marriage to a Catholic man, for fear of their being led astray?

5. If it is to be postponed: should they be admitted to the monastery in order to be instructed in the Catholic Faith, or should we wait until the time of their marriage to a Catholic man?

R. To 1. The Vicar Apostolic should first of all, with all his power, endeavor to obtain the consent of the girl's father. If consent cannot be obtained, he should seriously consider the inconveniences that may result from admitting such a girl into the Church, both with regard to the immi-

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nent danger of her being led astray, and with regard to the serious harm to the Catholic school and mission; and, as long as no, or only negligible, inconveniences are foreseen, he should admit her without delay; but if serious inconveniences are foreseen, he should postpone her admission to the formal and public profession of the Catholic Faith, unless the danger of death is imminent; and in the meantime, he should take care to encourage her to persevere in her good intentions, and to pray to God that He may remove all obstacles; and he should also take care that she continues to remain in the monastery, so that she may complete and perfect her Catholic education in that manner.

To 2. and 3. Affirmative; and they should ensure that the parents keep their promises. And with regard to 1, 2, and 3, it is understood that suitable inquiries should be made regarding the value of the girls' baptisms; and if, after these inquiries, there is a reasonable doubt about the validity of these baptisms, the girls should be secretly baptized under the condition.

To 4. Negative, unless there is a well-founded hope of their Catholic education.

To 5. Provision is made in the answers to 1, 2, and 3; and if further difficulties arise, the Reverend Diocesan Vicar Apostolic should refer to each case individually.

Acts, Vol. XXVII, page CCCXVI, 13.

[*Latin ed. p. 194*]

194 APPENDIX II. From a Letter of the Sacred Congregation of the Holy Office, March 6, 1891. — A Doubt Regarding Irregularity. It was resolved that this matter be communicated to this Sacred Congregation (of Propaganda), according to the practice in similar cases, the decree issued on the fourth day of December, 1890, which is as follows: Since the German Bishops had inquired whether heretics and their descendants in those regions were also subject to the same irregularity as elsewhere, the response was: It was resolved to send to the Sacred Congregation of Propaganda, as a rule for similar cases, the decree of the fourth day of December, 1890, of the following tenor: Since the Bishops of *Germaniae* had inquired whether heretics in those regions, and their descendants, were subject to the irregularity, as in other places, the response was: Affirmative; and that heretics converted to the Catholic faith, and the children of heretics who persist in heresy or who have died, are irregular, even in *Germaniae* and in other places about which inquiry is made, to the first and second degree through the paternal line, and only to the first degree through the maternal line; and therefore, they require a dispensation in order to be promoted to the Tonsure and the Orders. Sacred Congregation of the Holy Office, September 5, 1736. — Doubts Regarding Superstition. It is the custom in the Kingdom of Tunkin that the entire community must contribute to the construction of a temple for idols and other superstitious practices, just

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as they do for other public works, by contributing money or other things. If anyone refuses, the community will inevitably and violently take from their goods much more than the sum prescribed for them, or will impose a much heavier fine upon them, or even accuse them before the magistrates, with the danger of denying the faith, imprisonment, and other grievous damages. The question is: 1. Is this permissible? 2. Is it at least permissible with the aforementioned protestation, in which the faithful declares that they are contributing only to avoid a serious imminent harm, etc.? 3. Is it permissible for the faithful, when they are forced to cut down trees in the forests, or even to carry them to the place destined for the construction of the temple, to do so? 4. Is it permissible for the faithful, when they are forced to cook food, or to contribute rice for the sustenance of the workers, to do so? Answer: To questions 1, 2, 3, and 4: It is not permissible, whether with or without the aforementioned protestation.

[*Latin ed. p. 195*]

APPENDIX II. 195. It is customary for certain foodstuffs to be sacrificed, or offered to idols, at various times during the year, and the entire community gathers to partake of them; sometimes, Christians are compelled to contribute money for the purchase of the sacrificial animal, and sometimes they are required to prepare certain delicacies and bring them to the place of sacrifice, where they also customarily feast. Therefore, the following questions arise: 1. Is it permissible to participate in these practices, provided that the intention is solely for the faithful to join in the communal celebration and enjoyment, or to reciprocate the hospitality of those who have previously hosted them? 2. Is it permissible to participate in these practices in cases where such food is offered, but not consumed in common, provided that such a contribution of money, or the bringing of such food, is done solely to avoid a serious and unavoidable loss, or with a similar declaration of intent? To 1. It is not permissible, whether with or without the aforementioned declaration. To 2. See the next question (i.e., the immediately preceding one). J. S. C. S. Ofici, December 15, 1768. Doubts concerning Communion at Pagan Tables. Since Christians, often in small numbers, are frequently compelled to associate with pagans, and find themselves daily at their tables and banquets; and since it is the custom of pagans to offer food, not only directly to the worship of idols, but also prepared for the ordinary meals of the family, placing it before the idols, the Christians who are present there, out of timidity, also partake of the food indifferently, because it would be shameful, and an injury to the pagans, if they refused to use the food that has been set out. The question is therefore raised: 1. Can these Christians partake of this food when no scandal is given? 2. Can Christian wives of pagans also partake, who, if they do not eat, are subjected to curses, insults, and sometimes even beatings? 3. Can even pregnant women and women afflicted with other infirmities partake, in which case the use of

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meat is necessary, since nothing else is offered except meat that has been offered to idols? 4. Can Christian laborers, who are often compelled to work for pagans, and to whom, if they do not partake once a week of the meat or other food offered to the idols, they are denied their wages? If all of these, due to weakness and timidity, do not obey the prohibition against using these things, should they be excluded from the Sacraments?

[*Latin ed. p. 196*]

196 APPENDIX II. R. Having received a report concerning a doubt from the Kingdom of China, presented to the Sacred Congregation for the Propagation of the Faith and forwarded by the same to the Holy Office for resolution, the Most Holy Lord, after hearing the Most Reverend Cardinals, Inquisitors, and after deliberation, decrees that it is permissible to consume food of any kind, even if offered to idols, provided that it is not done in a temple, nor in a place sacred to idols, and provided that all appearance of worship or veneration of idols and superstition is absent, and that there is no danger of scandalizing the faithful or the unbelievers. S. C. of the Holy Office, November 16, 1769, N. Miss. Sutchuen. Concerning the offering of silver for pagan use, I have often experienced the difficulty that Christians face, namely, that they should not, in any way, contribute to superstitious practices. Indeed, a decree of the magistrate has been issued, by which each member of the populace is commanded to contribute something of silver, either for the construction or repair of a temple, or for sacrifices to idols. Whoever refuses is beaten and flogged, and if he is a Christian, he is compelled to apostatize after the beating. Furthermore, seven or eight superstitious individuals, appointed by the community, demand a small amount of silver from the Christians, and if they refuse, they are stripped of their clothes, or their possessions are forcibly taken, or they are subjected to beatings. Regarding the demands of the magistrate, a certain Illustrious Bishop and Apostolic Vicar of the Province of Fokien in China, consulted previously, responded that Christians may contribute, not because of superstition, but rather because of the law that the magistrate has to collect taxes. As for those who collect from the community, it is understood that the older missionaries have permitted Christians to contribute a small sum, provided that their names are not written in the register of those who contribute, and that the Christians make a declaration, namely, that they are not contributing for superstitious reasons, but rather that they are contributing as a gift to the collectors, so that they may be able to feast together, and thus in this way, the weak Christians may redeem themselves from vexations and annoyances. Despite these decisions, I must confess that I have always been anxious; therefore, in order to act more safely, I considered it wiser to consult regarding such matters. R. In the case in question, it is not permissible. It should be written to the missionary requesting that, according to what is presented in the case, both the magistrate in his decree,

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and those appointed by the community to collect from the superstitious, demand money from the Christians, either for the construction or repair of a temple, or for sacrifices to idols, and furthermore, the Christians know that...

[*Latin ed. p. 197*]

APPENDIX. II. i97. This is resolved by the necessity of providing for that purpose. Therefore, it is by no means to be praised that Apostolic Vicar of the province of Fokien, who once responded that Christians could contribute, not indeed through superstition, but rather through the law that a magistrate has of demanding taxes; nor is the opinion of the ancient missionaries to be followed, who instructed Christians to contribute a small sum, but with the condition that their names should not be inscribed in the list of contributors, and furthermore, that the Christians should make a declaration, namely, that they were not contributing for superstitious reasons, but rather, as a payment to the tax collectors, so that they might be able to live among them. In both cases, whatever is paid, is paid for the sake of superstition; this reason is proposed in the magistrate's diploma; for the same purpose, even for their own sake, those men who are in charge of the community demand the required money from the superstitious. Therefore, whatever the intention of the person paying may be, and whatever protestation they may utter, if anyone were to demonstrate to the magistrate, or to those men, by their actions, that they were in some way cooperating with the superstitious, which is the greatest wickedness for Christians, and not even committed for the sake of their own safety. S. C. S. Officii, 15 December 1769. Vic. Ap. Sutchuen. Concerning the preparation of food for idols by a Christian woman. A Pagan woman, on the 9th and 10th days of each month, at the beginning and end of the Chinese year, on the anniversaries of the dead, sometimes once or three times a year, offers sacrifices, either directly or indirectly, to idols or to the dead; but Christian women, the wives of these men, whose duty it is to manage the kitchen, are ordered to prepare the necessary food for this purpose. These women, fearing beatings, curses, and injuries, obey... In response to the Apostolic Vicar of the province of Ghen-si, who was seeking advice, it was decreed that it is permissible for these women to prepare food intended for the family's consumption, with the declaration that they are acting for the sake of the family's consumption, and not for the idol; however, the Holy See has not decreed anything concerning food that is offered directly to the idol. It happened to me that such a woman confessed; I, after first questioning her about the aforementioned food, replied that she could not help but prepare it, since she was alone at home and the only woman, and her husband was a very superstitious and irascible pagan. Therefore, understanding the weakness of this woman, without confession, I quickly dismissed her, weeping, because she was in such a difficult situation on both sides. Therefore, the

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question arises whether these women, so oppressed by difficulties, could save themselves from superstition in any way.

[*Latin ed. p. 198*]

198 APPENDIX II. Concerning the preparation of food, whether it is permissible to do so without distinction, if they declare that they do not intend to labor for idols, and whether they should be absolutely excluded from the Sacraments in the case where they prepare food that they know will be offered to idols? R. In the aforementioned case, it is not permissible for Christian women, in order to avoid the wrath of a superstitious and irascible husband, to prepare meats that they know will be offered to idols and the spirits of ancestors. However, Vicars Apostolic and missionaries, to whom the Apostolic See grants the faculty of dispensing in marriages concerning differences in religion, are not permitted to use this faculty when there is a danger of the faithful spouse being led astray. Therefore, let them be careful to observe, with all diligence, the conditions prescribed in the formula of the indult itself, as well as the declarations and decrees issued by the Sacred Congregation on this matter, and those transmitted by the Sacred Congregation for the Propagation of the Faith to the Bishops and Vicars Apostolic in the Kingdom of Siam in recent years. Moreover, among these conditions, the one that must be especially observed is that there must be no danger of the faithful spouse being led astray; for if, as in the aforementioned case, an unbelieving husband compels a faithful wife to prepare food for idols, he has already led her to commit a mortal sin. Therefore, before a marriage is contracted, if such a case can be foreseen, either due to excessive superstition or the anger of the unbelieving husband, dispensations should not be granted in this case. 8. C. S. Office, March 17, 1847 - Vicar Apostolic of Siam. Concerning the custom of shaving children among the Siamenses. Among the Siamenses, there is a custom of shaving boys and girls at a very young age, leaving a tuft of hair on the top of the head; when they reach the age of eight years and above (sometimes it is delayed until sixteen years), then the parents call upon a bonzio (Buddhist monk) to bless the child or girl with superstitious water; afterwards, the tuft of hair is shaved, and they participate in feasts and celebrations, and the parents collect money from their acquaintances and friends. All the Siamenses whom I consulted told me that this sprinkling is done for the purpose that the child or girl may not become insane, and to protect them from diseases or demons. This custom does not seem to be prescribed by their false religion, and it is not observed by many; it appears, therefore, to be a civil ceremony, to which certain superstitions are necessarily added among pagans. But now the question arises: 1. When the bonzio has already left, and the time for feasts and celebrations has arrived, can Christians (especially if they are invited by dignitaries) participate in these celebrations? Thus far, we have not prohibited participation when

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there are no comedies or dishonorable games.

[*Latin ed. p. 199*]

APPENDIX 11. 199. Among certain Christians, and especially the newly converted, the custom of shearing the hair of boys and girls is observed, leaving a lock at the top of the head, which they shear at the appropriate time, but in the following manner: In the morning, they bring the boy or girl, for whom or whom the parents have requested a Mass, to the church. After the Mass is completed, the priest blesses the child according to the formula in the Roman Ritual, and after they have returned home, among friends and acquaintances, they shear the lock of hair without any ceremony. Then, they prepare for a feast, and the parents collect money from those present, which they had spent at similar feasts on previous occasions. My predecessors, the Apostolic Vicars, permitted this, but with some reservations, and because among our confreres there are some who seem to disapprove of this ceremony due to a certain resemblance to practices performed by pagans, we considered it necessary to inquire, and if, as I believe, it can be tolerated with a safe conscience, we will declare it permissible to Christians. R. To 1. Let the decree of the Congregation of the Propagation of the Faith of March 1817 be given, namely: It is not permitted to be present at the shearing of hair; and as for alms and food, it is not permitted if these are held as part of a religious ceremony; but if they are given for the joy of the family, it is permitted. To 2. They are to be admonished to abstain. S. C. S. Office, February 21, 1850. - Vic. Ap. Siam Orient. Concerning the custom of feeding certain animals, which is suspected of being superstitious. For many years, the King of Siam, apart from the animals that are in the royal gardens, has kept various animals, such as elephants, horses, cattle, sheep, and goats, ducks, pigs, deer, chickens, etc., either in stables or in enclosures within the gardens; they are fed at the king's expense, and by numerous servants. Whenever an animal dies, it must immediately be taken to the *Rong Viset* (royal kitchens), where it is cooked and partly eaten by the servants, workers, and female servants of the palace, and partly sent to the *Rong Than* (house of charity) for the feeding of the poor. Some also say that a generous portion is offered to the *talapuin*. Furthermore, if the king demands certain animals from Christian leaders to be fed in his enclosures or stables, protesting that he does not intend *Kum*, that is, superstition, and will not allow it within the boundaries of the temples, but will order them to be fed solely for his own pleasure, can Christian leaders, with a safe conscience, offer these animals to the king? The reason for doubting is that, on the one hand, although the king uses these animals to feed his servants, workers, and the poor, it is still presumed that the king has some

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superstitious intention in mind, e.g.,

[*Latin ed. p. 200*]

200 APPENDIX II. In sustenendo vitam animalium, intendit suam propriam vitam conservare. Sed, ex alia parte, quando rex non solum non manifestat intentionem superstitiosam, sed coram tota sua aula saepe et frequenter protestatur quod ob bonum arbitrium, et non ob ullam causam superstitionis, intendat alere animalia, videtur loquelae regiae fidem adhibendam esse, quia vox regis ubique ut sacra et veridica habetur. Alioquin omnes qui verbo regio non credent (secundum ingenium huius nationis) ut rebelles reputabuntur, et maximis poenis cum tota sua cognatione affligentur. Christiani catholici de quibus agitur, si vera sunt exposita, praemittant protestationem: "se dare animalia, de quibus agitur in quaesito, taxative in Marrum tributum." Sciat Vicarius Apostolicus eosdem Christianos non esse ob id inquietandos. Monendus autem per Sacram Congregationem de Propaganda Fide, Vicarius Apostolicus praefatus, simplices sacerdotes, in vera Christi Ecclesia, in rebus ad fidem moresve spectantibus, non habere suffragium decisivum, sed solummodo, consultivum. Atque hinc acriter moneantur etiam praedicti missionarii siamenses ut in posterum abstineant se a similibus, nimirum ne audeant ferre suffragium decisivum in rebus fidei et morum. Sacra Congregatio, Sacrum Officiium, 8 Ianuarii. (851. - Vicarius Apostolicus Tunkinensis, Occidens. Dubia quoad constructionem fanorum pro idolis). Sunt Christiani, qui iam a mandarinis coacti sunt fanum publicum idolis erigere, et in posterum certe aliae ad hoc cogentur. Porro, stante crudelissimo tyranno qui hoc miserrimum Regnum gubernat, difficillime erit haec fana publica destruere ob mandarinorum et paganorum rabiem, qui civili potestate freti eadem destrui non patientur, vel destructa reaedificari urgebunt; sed facilius erit Christianis intra pagum suum sese a superstitionibus faciendis abstinere. Quaero: 1. An, attentis supra memoratis, Christiani qui fana huiusmodi erexerunt, censeri vere possint a superstitionibus immunes, modo nullos superstitionis actus in istis fanis erigant? 2. Vel, ut illae Christianitates a superstitionibus vere liberae sint, estne absolute necessarium ut illa fana destruant, quaecumque sint vexationes et mala quae exinde illis accidere poterunt? Et in quantum affirmative: 3. Tota christianitas debetne censeri superstitionibus implicata, quamdiu fanum ab eadem erectum adhuc stabit, vel tantum istius christianitatis primores?

[*Latin ed. p. 201*]

APPENDIX II. 201 R. Regarding 1. It is not permitted for Christians to construct temples for idols, nor to cooperate in the construction of such things, and a decree was issued for Japan, on December 7, 1626, namely: Faithful Japanese cannot, in order to avoid the danger of death or exile,

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construct altars or things for idols, nor cooperate in their construction. Regarding 2. Negatively, and a decree was issued for Sutchuen, on the feast of the Assumption, August 20, 1778, namely: Can Christians who purchase territories, upon which there are idols or small shrines of idols, compel the gentiles, who previously possessed the territory, to remove them from the territory, and if they refuse, is it permissible to destroy them? — When territories are sold, it appears that with the transfer of ownership of the land to the buyer, the right and property of the idols or shrines dedicated to idols, which are located on the land, are also transferred. If this is the case, the Christian is obligated to remove the idols and destroy the shrines, or to alter them in such a way that no further trace remains of a shrine dedicated to idols, and to remove all opportunity for superstitious worship. However, it is not permissible to urge the gentiles to remove the idols and destroy the shrines themselves, for fear of inciting disturbances, nor is it just that, what the Christian himself can remove, he should allow pagans to transfer and worship with profane rites. If, however, the idols and shrines of this kind, although located on private lands, are of public right and under the authority of the prince, then it is not permissible for Christians to remove and destroy them; and rather, they should abstain from purchasing such territories in which these profane images and shrines are found. Regarding 3. Provided in the second. S. C. de Prop. Fide. C. P. pro Sin. March 18, 1817. Vic. Ap. Siam Regarding some superstitious practices: 1. At the time of a lunar eclipse, the people of Siam become agitated, they strike bells and other instruments, and they explode military fireworks, believing that a great dragon wishes to swallow the moon or the sun. They make a great noise in order to free it from the dragon's mouth, and thus they believe that they have earned great merit and are demonstrating a pleasing disposition. The King of Siam is accustomed to give alms to his bodyguards and to others whom he finds nearby. Can Christians accept such alms, and if they are ordered to do so, can they explode military fireworks? 2. There is a custom of preserving the hair of boys, shaved at the crown. When they reach the age of ten or twelve, more or less, the parents set a day on which the hair should be cut, and relatives and others who wish are invited to the ceremony.

[*Latin ed. p. 202*]

202 APPENDIX. There are also certain individuals, both lay and clerical, who pray and sprinkle their blessed water over those who have just been tonsured. Although this ceremony appears superstitious, it seems, as our Christians have heard from the prefects of Ayutthaya, that this custom was introduced primarily for the purpose of collecting money from the parents, which is generously given on the occasion of this ceremony. Can Christians, especially when invited by their superiors, give money and participate in such a gathering? Can they sell food items for the purpose of holding such

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gatherings? Until now, we have forbidden our own [people] to do so. However, some secretly assist, entirely apart from any superstition; can Christians employ a similar practice, solely for the purpose of bringing joy and collecting money?

3. The people of Ayutthaya often buy birds, fish, and turtles, which they line with cloth, greet with joined hands, and then release into the river, believing that they thereby earn great merit, because in this way they grant freedom and life to these creatures, and they ask them to help them in the future. Can Christians sell these animals, or would that be considered conniving at their superstition?

R. To 1. Unless the public opinion considers the cessation of warfare and the acceptance of alms from Christians in the case in question to be acts of superstition, Christians should not be troubled by these matters.

To 2. It is not permissible to attend the tonsure ceremony; and regarding the alms and the meal, it is not permissible if these are considered parts of a religious ceremony; however, if they are held for the joy of the family, it is permissible.

To 3. Unless it can be proven that the animals in question are sold by Christians to non-Christians, in order that they may be given freedom or kept in order to foster superstition, there is no reason to be concerned.

[*Latin ed. p. 203*]

2oa FROM THE HOLY CONGREGATION OF THE COUNCIL OF PARIS. DECREE REGARDING MARRIAGE. June 16, 1894. Session 24, Chapter 5, Concerning Reforms. SUMMARY OF THE CASE. On August 10, 1876, Gilbert S. . . . , aged 44 years, and Laura L. . . . , aged 29 years, both from the city of Paris, entered into marriage with each other according to the Tridentine form, having obtained a dispensation regarding disparity of cult, and, according to the law of France, performed the civil act of marriage, and immediately began to live together as husband and wife in the home of the husband. However, how miserable a fate Laura had been placed in, soon became apparent. She had a husband who was a drunken, inhumane abuser, and a loathsome sodomite, as the young woman herself and all the witnesses, who are many, proclaim with one voice. The young woman was, indeed, horrified, and with all her strength, she constantly resisted the man's lascivious acts. Day by day, she became more and more sorrowful, and her parents, realizing this, and furthermore observing that their daughter had suffered a serious detriment to her health for this reason, at the urging of a physician, brought her back to their own home. This occurred in the month of January of the year 1881. After some years had passed, in the month of March of 1887, the woman requested a decree of divorce from a lay judge, and obtained it. During the course of this civil action, it is worth noting that Laura presented two documents to Mr. Brouardel, by which the faith was affirmed that this woman was

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still a virgin, and these conclusions contradicted the opinions of the body of expert men who examined her. Conversely, the husband presented the testimonies of Messrs. Martineau and Descouts, by which testimony was given of his virile potency, and, together with the aforementioned document of Mr. Brouardel, it was inferred that the marriage had been consummated.

[*Latin ed. p. 204*]

204 PARIS. It was possible that the wife had been defiled due to a lack of proportion in the genitals, nor had Gilbert ever been subjected to the vice of sodomy. These documents are found inserted in the bundle of proceedings. After these events, desiring to enter into new marriage, Laura appealed to the Church, requesting the dissolution of her marriage, which was both valid and unconsummated. The prayers, according to custom, were presented to the Archbishop of Paris, who, acting according to the commands of the Most Holy Fathers, ordered that the customary process be carried out. The woman was questioned by the judge, presented witnesses of good character, and finally submitted herself to a judicial and physical examination by two doctors, in the presence of a matron and a prepared bath. The man also underwent an examination, affirming that he had continuously exercised marital intercourse almost every night throughout the entire period of their common life, which he believed to be perfect; and that he had never abused his wife. He did not present witnesses of good character, but, after having been given all the proceedings to read, he considered it better to write a lengthy memorial in his own hand, "in which, as the delegated judge wrote to the Prefect of the Sacred Congregation, he endeavored to refute the accusations made against him. He showed himself to be greatly offended by the vice of intemperance, which was attributed to him by several witnesses, and therefore, from the widow Auger, he obtained that certain restrictions be included in the declarations given before the judge, which he himself dictated, as we have learned from his authentic writing." And he repudiated all those who testified in favor of the plaintiff, "because they are merely hearsay."

I. SYNOPTIC SUMMARY OF THEOLOGICAL OPINION. Two things, therefore, we must inquire, said the Theologian: whether there legally exists an unconsummation of the present marriage, and whether there are urgent and sufficiently valid reasons to grant the requested dispensation. Regarding the first point, the answer must be affirmative. For, in fact, a marriage is considered unconsummated in three ways: 1) from a sworn declaration...

[*Latin ed. p. 205*]

PARIS. 205 marriages; 2) based on the testimony of seven witnesses; 3) based on a physical examination of the body. Therefore, let us examine each

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point, as they are presented in the records. The wife, or actress, without hesitation, declared not only that the marriage had never been consummated, but that the husband had never made any attempts, in any way, to consummate it, under oath. When asked whether the husband had had marital intercourse with her, she replied: never, and that the husband, who shuns women and marital duties, made no attempts, not even on the first night. A little earlier, she had stated that the husband was accustomed to indulging in shameful acts. Indeed, as the authors commonly teach, guided by experience, a tendency towards the female sex is often found in those who are effeminate. See Alibert, *Elément de thérapie*, vol. 2, page 521; Roubaud, *Traité de l'Impuissance*. Furthermore, in the *Nullitatum seu dispensationum matrimonii* case in Naples, on June 14, 1862, it was rightly observed that "the vice of effeminacy, as well as abuses of lust, often produce impotence." Therefore, if we consider what the actress testified, the presumption arises that the man did not consummate the marriage for that reason, because he felt absolutely incapable. However, the husband, knowing that he was suspected of impotence, and that his wife, as I will say later, had been found to be untouched by experts, consulted two doctors outside of court who examined him and testified in writing to his potency. Therefore, when called before the judge, he presented the testimonies of these doctors, and when questioned about his marital duties, he stated that he had, throughout the entire period of their marriage, almost every night, indulged in marital acts and had had marital intercourse, which he believed to be perfect; and that if the wife was not deflowered, it was because of a defect in proportion. In these words, the husband not only contradicts the woman, but also contradicts himself, since, on the one hand, he confesses that he could not deflower her, or perfectly penetrate her, due to a defect in proportion, and, on the other hand, he believes that he had consummated the marriage.

[*Latin ed. p. 206*]

206. PARISIEN. Therefore, we also have a man who admits that he did not consummate the marriage, stating that consummation requires penetration and seed to be deposited not only within the vulva, but within the vagina, which would not be surprising. However, all of these things are confirmed by the testimony of seven witnesses, who, with one voice, affirmed both the veracity of the woman and the lack of consummation of the marriage, and none of them have been apprehended who have spoken about this matter with doubt. It remains for us to consider the final argument, which is derived from the examination of the body. A woman was examined by three expert physicians, after which, as is customary, a warm bath was administered. Subsequently, each of them, both in writing and orally, under oath before the judge, declared their opinion on this matter. Their opinion is that the woman presented signs of virginity or integrity

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that, without any doubt, exclude a perfect union. However, you might object that the judgments of such experts should not be given great weight, for it is a widely accepted conclusion that "no certain and inseparable signs of virginity are given" (Zacchias, Quaestiones medico-legalis, I, IV, title II, question 1, number 14). Furthermore, the canon states: "Often the hand is deceived and the obstetric eye" (chapter penultimate, on prohibitions). I respond that it is one thing to say that there are no signs by which virginity can always and in every case be certainly recognized, and another to say that there has never been a case in which certain signs of virginity were present. Furthermore, it is one thing for the organs, and especially the hymen, to be found intact, and another for the integrity to be such that it certainly excludes a perfect union, which is not always of the same nature among all virgins. Therefore, I say that 1) it is possible for a woman, even after repeated intercourse, to present genitalia that are naturally so composed and intact that, not merely from the mere fact of their integrity, but rather from the special nature and character of that integrity, an expert can certainly judge that she has never experienced a perfect union with a man; 2) and that, in fact, this is what has happened in the present case.

[*Latin ed. p. 207*]

PARISIAN. 207 Firstly, it must be known that the hymen, which is called by that name and about which both the ancients and the moderns have fiercely debated, does not consist of any particular membrane that all virgins possess, and each possesses identically. For the hymen, as has been recently demonstrated, is said to be the external opening of the vagina, which nature makes more or less narrow or loose, or capable of being loosened, in different individuals. Sometimes, indeed, and often, it happens that this opening is so narrow, and of such a delicate texture, that even a moderately sized man cannot penetrate it without tearing it, a tearing which is irreparable. And it is clearly deduced from the statements of experts that this is the case with the woman in question. The third expert, Dr. Ferrand, further testified that no signs were found in the vulva by which it could be determined that a man had attempted to consummate the marriage. Therefore, it is right to conclude that the marriage was not consummated. Regarding the causes for a dispensation, in this matter, I immediately say that I see several, and indeed suitable and sufficient. Certainly, among such causes, the probable impotence of the man should be considered, as Sánchez De matr. I. II, disp. 16, n. 6, which may be absolute, as is easily deduced from what the actress testified, or at least relative, which the man himself seems to acknowledge in this matter. Another cause for a dispensation is derived from an incurable aversion of the soul. Furthermore, the spouses in this case have such aversion for each other that all hope of reconciliation is to be abandoned, as both the woman and the seventh witness affirmed. A third cause, for obtaining a dispensation, rests in the mutual consent of

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the spouses. Such consent, says Sánchez I. II, disp. 16, "when joined with hatred and discord, and when it is without remedy and with fear of an unhappy outcome," is a sufficient cause for a dispensation. Furthermore, the woman, requesting a solution to the marriage, declared that the man did not dissent, nor did he...

[*Latin ed. p. 208*]

208. PARISIEN. The civil law permits the restoration of conjugal life by a sentence of divorce. OPINION OF A CANONIST. It is evident that, in order for a sentence to be pronounced dissolving the marriage of Laura L. with Gilbert S. with regard to the bond, two things must be established: 1° that the marriage was not consummated, 2° that there are grave causes present for pronouncing the dissolution. Indeed, after a careful examination of the procedural acts, these two things appear to have been proven in this case. The fact that the marriage was not consummated is first proven by the sworn deposition of the plaintiff, Laura L. For, after having taken an oath to speak the truth in a legally conducted interrogation, she openly confesses in the 8th interrogation that the marriage was not consummated; she repeats this in her answer to the 9th interrogation. This assertion of the woman is confirmed by the sentence of the civil court of March 15, 1887, by which a divorce was pronounced between Laura L. and her husband, because the husband had inflicted a grave injury upon his wife by abstaining from conjugal intercourse. — It is true that Gilbert S. testified differently in court. He, having taken an oath, stated that he had had intercourse with his wife, often; and that, in his opinion, the marriage had been consummated. But, setting aside the fact that the man must at least be considered of doubtful faith, who has abandoned the Catholic religion and is addicted to scandalous morals, it is certain that, when the spouses are in disagreement, the oath of the one must be considered true, if the other proofs agree with it. Indeed, these best confirm the testimony of Laura and exclude the deposition of Gilbert, as will become clear from what follows. Secondly, the testimony of the seventh witness is entirely in favor of the truth stated by the wife: all the witnesses express themselves almost in the same words. On the other hand, the man, Gilbert, presented no witness in his favor: he was content to submit a letter to the aforementioned Mr. Monlezun, in which he rejects all those who testified in favor of the plaintiff, claiming that they are based on hearsay, and rejects two others because they claim that he is impotent.

[*Latin ed. p. 209*]

PARIS. 209 concerning the conjugal act. As it is evident, the repudiation of the witnesses, because they are based on hearsay, is ridiculous; for it concerns a matter which can only be known, apart from expert testimony, by those who have witnessed it. Furthermore, the witnesses brought for-

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ward are such that they firmly assert that they are adding their testimony to that of the Plaintiff. Nor is the testimony of the witnesses disproven by the fact that Charles Etienne and Henry Gouran asserted that Gilbert S. . . . suffered from impotence concerning the conjugal act, which Dr. Descout has demonstrated to be false. For, firstly, they are among fourteen others who testify that the marriage was not consummated. Secondly, since they themselves, the first in response 4, the second in response 6, believe that the marriage was not consummated, it must be concluded that they are mistaken only in the reason given for the lack of consummation. Finally, the legal proofs are strengthened by the examination of the woman's body made by experts, from whose sworn depositions it is deduced that Gilbert S. did not consummate the marriage with Laura L. Indeed, the testimony of another doctor, Paul Descout, has been presented to the contrary, in which it is asserted that Gilbert S. was not impotent concerning the conjugal act, and that the consummation of the marriage could have taken place, since the hymen of Laura L. does not show signs of having been broken; for the hymen can remain intact, since the male member could have entered "dans le canal vulvo-vaginal" [into the vulvo-vaginal canal], but not into the vagina: which can also happen for a long time, since sometimes a virgin woman is found even at the time of childbirth. But this is not the question in our case. As for the second point, it must first be noted that the authority of Dr. Descout is in no way preferable to the opinion of other doctors, whom the archiepiscopal court of Paris considered it necessary to consult. Furthermore, the aforementioned Doctor never examined the hymen of Laura L. . . . and his reasoning rests on the assertion of Gilbert S. that the consummation took place, upon which supposition the same Doctor sought a way to explain how Laura L. . . . remained a virgin.

[*Latin ed. p. 210*]

210. PARISIAN. Let us consider. Furthermore, the assertion of Descourt, although perhaps true in theory, is of no value in this case; for Dr. Brouardel expressly excludes it in response 6. Therefore, the hymen was such that it did not yield to the male member and should have been completely broken by the entry of that member. On the other hand, the assertion of Doctor Descourt is contradicted by another point. Indeed, Dr. Bucquoy states in his testimony: "The hymen offers a slight resistance, which it would be easy to overcome if one were to insert the finger further into the vaginal cavity. Even without attempting this, a rather sharp pain is aroused." However, Gilbert S, in response 6, asserts: "In our initial relations, my wife did not experience any pain." This is clearly impossible, as appears from the aforementioned statements. Therefore, the marriage was not consummated, which we have demonstrated from the sworn testimony of the actress, from the testimony of the seventh witness, and from the expert opinion of the physicians. In order to obtain a dispensation

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from a valid but unconsummated marriage, it is necessary that, besides the fact of the marriage not being consummated, grave causes also concur. Indeed, after examining the records of the process, we have a) a decree issued by the civil court for absolute divorce; b) the impossibility of effectively restoring the spouses to conjugal life. This impossibility arises primarily from the confession of the spouses themselves. The impossibility of reconciliation rests entirely on the perverse character of the husband, who kept his wife in a deplorable condition and sought to compel her to illicit acts, which the wife herself testifies, and which witnesses openly declare, from whose testimonies the husband's contradictory assertion in response 8 is excluded; c) the condition of the actress, who, having only her elderly and infirm mother, greatly desires to enter into new marriage. Given these circumstances, I believe it is advisable to consult with the Most Holy Father regarding the granting of a dispensation from a valid but unconsummated marriage in this case.

[*Latin ed. p. 211*]

PARISIAN. 211 OBSERVATIONS OF THE DEFENDER OF MARRIAGE. Although not a few, nor slight, obstacles exist to this kind of petition; nevertheless, the actress is most favorably supported by two eminent Counselors, who were appointed to examine the proceedings concerning the matter in question. Therefore, I consider it worthwhile to briefly mention certain things relevant to my office.

First, it must be considered that Laura declared the marriage to be unconsummated only after a long period, and after having been unsuccessful in her efforts. Gilbert, on the other hand, openly confessed that he had, on several occasions, had marital relations with her. From this, it clearly follows that this matter must be handled according to the statute in chapter *Accepisti* of the book on ecclesiastical and civil law, where it is stated: "But if the woman, after a year or six months, declares to the Bishop or his representative that she has not known him, and you affirm the contrary, you must be believed, because you are the husband: for if she wished to declare it, why did she remain silent so long? She could have known it quickly and in a short time, if she could have gone with him. But if, immediately after the marriage, within a month or two, she declares to the Bishop or his representative... if it can be proven by proper judgment, you can be separated, and she, if she wishes, can be married in the Lord."

This canonical rule is all the more important in the present case, because Laura, while not daring to raise any doubt whatsoever about the husband's virility, recounts such things to exclude the consummation of the marriage, which are, indeed, extraordinary and improbable. For, to the questioning judge, she responded: "During this time (of married life), did you always, at night, share the same bed with him?" She replied: "My husband has the habit of drinking. Therefore, he did not sleep with me. He slept on a chair,

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and then came to the bed in the morning when I got out of bed..."

And to the same judge, who pressed her: "On the first night of your marriage, did Mr. Gilbert propose to you to fulfill the marital duty? Did you consent without the slightest difficulty? What was the result of these first attempts?" she said: "He did not propose to me any marital duty on the first night, nor since then. He read me verses about love..."

[*Latin ed. p. 212*]

212 PARISIEN. That is all. He did not ask me for anything else, and I had nothing to refuse him." Further pressed by the judge: "To what cause do you attribute this lack of consummation of your marriage?" She gave this explanation: "Because marriage and its duties are not in his thoughts. He does not tolerate a woman." How to reconcile this, I do not understand at all. For it is difficult to believe that someone who, entering into marriage, takes a wife and lives with her day and night for many years, should abhor the marital act. It is even more difficult to believe this of a man who is said to be drunk: "for the drinking of wine stimulates lust, according to Proverbs, chapter 20, verse 1: Luxury is wine; and according to Paul to the Ephesians, chapter 5, verse 18: And be not drunk with wine, wherein is luxury." We have the most famous experience of this in Lot, who, being drunk with wine, did not abstain from his own daughters, as it is narrated in Genesis, chapter 19, from which Ovid aptly says: "Wine prepares the mind for Venus." (Cf. Zacchias, quaestiones de medicis legibus, book 5, title 1, question 6, number 16.) Finally, it is hardest to believe that such a man would abhor the embraces of his bride, when Laura herself confesses: "He was tyrannical and jealous. I could not look at anyone without angering him. He had hallucinations, believing he saw things that did not exist." And since jealousy among spouses is only the daughter of conjugal love, as Coscius states in *De Separatoris, Tutoris, Coniugis*, book 2, chapter 11, number 88: "Hatred also produces jealousy, either in a man or a woman, which among spouses is the daughter of conjugal love; but if love exaggerates jealousy to such an extent that it finally believes that the other has violated the trust given to it, then love degenerates into capital hatred, for there is nothing more violent than jealousy, since it disturbs the mind and almost snatches it away..." Laura perceived the force of these difficulties, and therefore, further questioned by the judge: "During the time that you lived together, did you often try to accomplish the conjugal act? Are you certain that it was always without success?"

[*Latin ed. p. 213*]

PARISIAN. He presumes to explain the matter thus: "He has never attempted it. All of my husband's habits are unnatural. He made proposals to me which I refused. These were proposals for bad, unnatural habits. He wanted to force me, and I constantly resisted. I have observed that he has

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solitary habits." However, it is easier to sing than to persuade; all the more so, because this clearly contradicts the aforementioned husband's jealousy. Furthermore, since this is a matter of conjugal love, it renders the accusation of such a heinous crime even more unbelievable, and moreover, it rightly demonstrates that the jealous husband has not neglected any of his duties towards his wife, in order to conciliate and win over her innermost feelings. Regarding the examination of the actress's body, it is best to recall what the modern theological consultant wrote in the case of the Marriage of S. Galli, on April 14, 1894: "Arriving at the third argument, which is drawn from the examination of the woman's body, I will be more severe, and I believe that no one should take it lightly, if I were to say from the outset that this danger must be carefully considered. I do not deny that such an examination of organs can be done solely as an auxiliary measure; but when it is a question of supporting a weak foundation, who would deny that even a strong support is absolutely necessary? But in order to judge more correctly of the strength and validity of this auxiliary measure in the matter of proof, it will not be out of place to refer here to the rules which, in the same matter, the Sacred Congregation of the Council decreed should be observed and communicated to the Ordinary Bishops, on August 22, 1840." And having recited here the rules given in § Procedendum and § Padex cited in the instructions, he concluded: "These rules must be observed all the more in this matter, the weaker the cause of the accusers appeared." My actions, combined with the words of the aforementioned consultant, make the actress's case appear quite weak, and furthermore, no one can deny that there is a significant difficulty in recognizing the actress's virginity in this case. Indeed, a judicial examination of the woman's body is carried out in almost ten...

[*Latin ed. p. 214*]

214. PARISIEN. After a period of years following the separation from conjugal life, which was carried out by two expert physicians, who, moreover, examined only the female, postponing the examination of other parts of the body from which certain indications could be gathered. Therefore, I do not doubt that the aforementioned question, which was left in doubt, should be answered: Negatively, or, if that is not possible: the proceedings should be completed. With these considerations in mind, the purpose was to clarify the question of whether one should consult with the Most Holy [Father] regarding a dispensation from a valid but unconsummated marriage in a particular case.

RESOLUTION. The Sacred Congregation, after deliberation on June 1, 1894, decided to respond: Affirmative.

BOLIVAR. TAXES FOR THE SEMINARY. On July 14, 1894. Council of Trent, Session 23, Chapter 18, concerning reform.

SUMMARY OF THE MATTER. The Fathers of the Congregation of the

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Most Holy Redeemer, having been summoned to Bolivar to dedicate themselves to sacred missions there, from convents that had been suppressed in the Bolivarian state, namely the convents of St. Augustine, the Blessed Virgin Mary of Mercy, and St. Francis, obtained one-half of the assets that had previously belonged to those convents; the other half was assigned to the Diocesan Seminary. This division was ordered by a decree of the Sacred Congregation for Extraordinary Ecclesiastical Affairs dated February 25, 1870, and its execution was such that, until the year 1877, they were to divide the revenues from the lease of these properties equally between themselves, calculated in Italian Lire at 4,800 for each share; in the year 1877, however, these properties were divided, and each was assigned to the respective party by a public instrument, becoming their free and perpetual property.

[*Latin ed. p. 215*]

BOLIVIA. 218 The peace thus established was maintained in this state until the year 1891, when the cause of the controversy was the Decree of the Deputation of the Diocesan Seminary, approved by the Ordinary, and the notification sent by the Superiors of the Redemptorist Fathers on September 11th of that same year, worded as follows: "The Deputation of the Pious Fund, in its session of August 27th of the same year, presided over by the Reverend General Vicar, having before its eyes session 23, chapter 18 of the Decrees of the Council of Trent, decreed that the Reverend Fathers Redemptorists should pay annually, with the favor of the Diocesan Seminary, a sum of 800 scudi, that is, 4000 francs."

The Reverend Fathers Redemptorists opposed this decree and protested to the Bishop of Bolivia, stating that they were not bound by this decree due to the full exemption they enjoyed, similar to that of Mendicant Orders, by virtue of the Brief of Pope Pius VII of January 9, 1807. At that time, the Bishop of Bolivia presented the controversy to the Apostolic Delegation in Lima, in the Republic of Peru, transmitting a copy of the same Brief of Pope Pius VII, with the following question: "Whether, therefore, the Religious Community of the Most Holy Redeemer in the state of Bolivia, notwithstanding the privilege of exemption from the jurisdiction of the Ordinary, is obliged to pay a tax in favor of the Seminary, according to the Decree of the Holy Council of Trent, session 23, chapter 18."

The Apostolic Delegate, on January 19, 1892, responded: "Regarding the question... we believe it should be answered affirmatively. In the Instruction published by the Holy Congregation of the Council in the year 1725, by order of His Holiness Benedict XIII, together with the Constitution *Creditae Nobis* of the same Pontiff in IV, it is read: 'The tax in favor of the Seminary must also be paid by the Regulars, and by this Constitution of Our Holy Lord, the Regulars are only exempt with respect to those benefits and revenues which the Apostolic See has clearly and expressly granted

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to them, and for a truly and properly burdensome cause, a complete exemption.' Furthermore, the Holy Congregation of the Council declared on February 6, in the year 1646: 'There is no exemption from the contribution to the Seminary, except for those who are expressly excluded by the Holy Council of Trent in chapter 18, session XIII, even if they are relatives of the Pope and Cardinals of the Holy Roman Church, and no privileges of exemption are valid for them, except in the aforementioned cases.'"

[*Latin ed. p. 216*]

216 BOLIVAREN. It has been declared that a special and individual derogation was made by the Council of Lateran, etc., etc. It does not seem to include the communication of privileges to mendicants, even the exemption from ecclesiastical taxes; since, on this matter, the condition of the possessors and mendicants is entirely different, indeed, completely opposed. The superiors of the Redemptorists were certain that they had unknowingly arrived at this decision; whereas, on the contrary, the Apostolic Delegate believed that the religious had avoided the question by only appealing against the Bishop's decree concerning the right of exemption granted to the Regular Canons. Therefore, he warned and urged both parties to appeal to the Holy See, for a formal judgment, which the parties carried out, submitting the matter to the Sacred Congregation of the Council. The same Apostolic Delegate, having been consulted on the controversy presented to the Sacred Congregation regarding the procedure for taking a vote, responded on June 5, 1893, that he had reached a decision on the matter, because he believed that the religious were opposing the Bishop's decree only on the grounds of the exemption; that if he had known of other reasons, subsequently presented by the religious, he would have changed his opinion.

Synopsis of the Dispute:

Firstly, they oppose the peremptory exception already made to the initial agreement, which assigns a certain portion of the goods to both the Diocesan Seminary and the Redemptorist Fathers. Secondly, they point out that the Bishop's intention is also undermined on the other hand, because the Seminary does not enjoy the conditions required by the Council of Trent for exercising the right to claim contributions from all ecclesiastical goods. For while the Fathers of Trent demand that those who are educated in the Seminary should be clothed and tonsured in a clerical manner, demonstrating the nature of the ecclesiastical vocation and responding more fully to it, on the contrary, in the Bolivaren Seminary, young men are educated in secular sciences, wearing secular clothing, and showing no preference for an ecclesiastical vocation, and thus infringing upon the RIGHTS OF THE

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RELIGIOUS.

[*Latin ed. p. 217*]

BOLIVIA. Of the 217 students, very few dedicate themselves to ecclesiastical ministry; those who are to complete their studies are sent to the seminary established in Quito. When questioned about this matter, the Bishop of Bolivia did not deny it, but at the same time indicated that he had endeavored to establish a Major Seminary exclusively for the training of clerics, for which purpose the Fathers Redemptorists were required, according to the decree of the Council of Trent, to collect a tax. Furthermore, the Fathers Redemptorists point out that their Congregation, which is engaged in Sacred Missions along the coast of the Pacific Ocean, possesses its own seminary, where Fathers Missionaries are trained in ecclesiastical studies; and this house of studies currently numbers almost thirty clerics. However, almost all of the students come from Europe; therefore, the Congregation, in addition to the expenses of support, must also bear a considerable expense for travel. The Fathers Redemptorists, moreover, devote themselves diligently to extraordinary missions of preaching, which they perform entirely without charge, thereby expending considerable resources in preserving the divine cult and in daily works of charity, so that they assert that the ordinary fruits of these works are not sufficient and that they require the alms of the faithful, especially through manual offerings. Therefore, they conclude that they are unable to pay the tax imposed by the Bishop, unless they interrupt their customary sacred functions, which would cause great harm to the faithful. Finally, they note that, although the Bishop legitimately imposed the tax, he has clearly exceeded all bounds in its amount. They recall that they had previously returned all the property before the division and paid an annual rent of 9600 livres, of which half, namely 4800 livres, was assigned to the Fathers Redemptorists and the Seminary, respectively. Thus, the Bishop demands almost all of the income from the property, amounting to 4000 livres, on account of the seminary tax. It is true, the Redemptorists openly admit, that the property now yields greater profits under their diligent administration, but they deny that it yields the amount claimed by the Bishop.

[*Latin ed. p. 218*]

218 BOLIVAREN. For, being questioned so that he might present his rights against the objections of the Fathers, he presented the following documents: "Concerning the reasons for presenting a tax assessment levied by the delegates of the Diocesan Conciliar Seminary to the Fathers of the Congregation of the Most Holy Redeemer of this city, I must state: 1° That the value of the funds of said Congregation is estimated at 95,000 *scudi* Roman, commonly called *sucres*, or 475,000 francs, according to an assessment made by the Government of the properties of this Republic, in order

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to pay the substitute tithe; 2° That these funds produce at least four percent annually; 3° That the seminary was established according to the rules established by the Council of Trent, although it is smaller in this city than the one in Quito; 4° Nevertheless, it serves the sacred functions of the Cathedral Church; 5° That it is necessary to provide support for the expenses of this seminary, which are great expenses, because 100 *scudi* Roman must be paid for each student residing in the Metropolitan Seminary, that is, annually; 6° Finally, after consultation with the Superior of the Congregation, it has been shown that the income of the house is insufficient, so that it cannot pay the pension, especially because it is burdened with debts." In the records, there is a testimony which confirms the income of the goods of the Fathers of the Most Holy Redeemer, according to the civil government's census, which is also mentioned by the Bishop in the aforementioned document. However, the Fathers of the Most Holy Redeemer state that they cannot accept the government as a witness, since it is known to all that it exaggerates the income in order to impose higher taxes. Indeed, in the document presented, the government states, in the fourth place, "Estimated revenues: approximately 20,000 *scudi*." However, the Fathers maintain that these "revenues" consist of uncertain income or offerings from the faithful, and some fruits derived from books published by the Fathers, and that all these revenues, being uncertain, certainly do not reach that sum. Furthermore, they point out that the Bishop's assertion cannot be accepted, namely that these funds produce at least four percent annually, because of the enormous necessary expenses in the...

[*Latin ed. p. 219*]

BOLIVAREN. In order to obtain and collect 219 stipends, a sum of two, or at most three, for every hundred is levied annually. However, after considering the opinion of the Bishop, based on an assessment of the property made by the government, the Fathers conclude that, although they would receive almost twenty-nine thousand livres, they would still be subject to the taxes of the civil government and the ordinary expenses of a religious house of twenty persons, from which it is clear that the tax imposed on the seminary of 4000 livres is enormous. It has been noted that the legal points mentioned by the Apostolic Delegate in the aforementioned Decree are of the utmost importance, and that they undoubtedly establish the right of the Ordinary to impose a tax on the seminary, even on the property of Regular Canons, unless they have been expressly declared exempt from this burden. Although the Encyclical Letter of Benedict XIII, granted to us, and the Instruction of the Sacred Congregation of the Council, given to us, are only addressed to the Bishops of Italy, both documents are based on numerous general declarations of the Sacred Congregation of the Council, which constitute common law; as can be seen in the work of the esteemed Pallotti in his Collection, § V, concerning the seminary with regard to the

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tax. Among other things, it is worth mentioning the resolution of the Sacred Congregation of the Council concerning monasteries, of September 7, 1714, which states that monasteries that contribute to the seminary of their order are to contribute to the Bishop's seminary from the remaining revenues. On the other hand, it seems that the Redemptorist Fathers are of the opinion that, in this case, the reason requested is based on the conditions of the seminary, namely that, until it fulfills the burdens imposed by the Council of Trent, it cannot enjoy the rights granted by the same Council. Furthermore, if the Bishop intends to establish a larger seminary, in accordance with the wishes of the Fathers of Trent, it seems that the assets allocated by the Supreme Pontiff as an endowment for the Conciliar Seminary are lacking, and that, in this case, the Ordinary will have the right to resort to extraordinary means, provided by the Council for the support of seminaries. In determining the amount of the tax to be imposed, it must first be noted that it cannot be imposed on the fruits, unless the expenses have been deducted, because, according to the law, the fruits are not to be considered unless...

[*Latin ed. p. 220*]

220 BOLIVAREN. after deducting expenses. Furthermore, when dealing with monasteries, those burdens which, according to common law, are attached to them, must also be deducted, since they are considered as alien property, as stated in Theanen, in chapter 18, session 23 concerning Reforms, position 54, and in Ulyxbonen, book 2 of Decretals, page 117. In this manner, the taxes levied in favor of the Seminary, based on the estimated yield, should not be less than three scudi for every hundred, nor more than five scudi, as decreed by Mileten. The Seminary taxes, dated December 6, 1737, and by Benedict XIII in the Constitution *Creditae Nobis*. With these things presupposed, the following doubt was to be resolved: Whether an Episcopal decree should be confirmed or infirm.

RESOLUTION. The Sacred Congregation of the Council, after deliberation on July 14, 1894, decided to respond: The decree is to be infirm. And this should be written to the bishop.

URBEVETERE FUNERAL. On August 11, 1894, session 25, chapter 13 concerning Reforms.

SUMMARY OF THE FACTS. In Urbevetere, on March 10, 1893, the most pious Mary Benedetti, born in that place, passed away. She left her homeland, moving her *lares* to Viterbo when she married Joseph Bernabei. However, she inherited her paternal home, and it was customary for her to spend some time each year with her parents in Urbevetere. During one of these visits, Mary's mother died on January 8, 1893, and two months later, the daughter followed her, stipulating that she be buried in the cemetery

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of Viterbo, near her husband. Because Mary's paternal home is located in...

[*Latin ed. p. 221*]

In the year 1821, in the parish of the Collegiate Church of St. Andrew, the parish priest was present at the hour of death of a woman, just as he would be with a mother, and administered the sacraments to her; he considered that he had the right to take up the body of Maria, to perform the funeral rites over it, and to accompany it to the place of burial. However, the Cathedral Church opposed this, claiming that it had the right to perform all of these actions, because the case involved a person who was not subject to the parish priest. The parish priest, denying that this was the case of a stranger, as the Chapter claimed, protested that he would yield to the Chapter, but would not renounce his right, which he must defend in every way. Therefore, he brought the dispute to the Sacred Congregation of the Council, on June 8, 1893.

The Synoptic Discussion: The Chapter of the Cathedral Church began by noting that the present dispute involves two questions: one of law, and the other of fact. The question of law is: Does the Cathedral Church have the right to bury the bodies of not only vagrants and strangers, but also of all those who have not acquired a domicile, or quasi-domicile, in any parish, nor have chosen to be buried in that same parish? From this arises the question of fact, namely: Was Maria Bernabei in such circumstances that the parish of St. Andrew should have been able to perform the funeral rites for her?

Regarding the question of law, the canonists asserted that this right of the Cathedral Basilica had been solemnly recognized by several judgments before the Roman Curia, and had been confirmed by a constant custom, but had been most strongly established by a certain Concordat on this matter, initiated by the clergy of Urbino and approved by the Diocesan Ordinary on July 18, 1874. It is helpful to refer to a part of this Concordat, which pertains to the dispute: "It remains to state what is known about the rights of parish priests concerning the funerals of foreigners: for the rules commonly transmitted by the Doctors do not seem to have taken into account all difficulties, indeed, we have observed, and still observe, that they have sown the seeds of some ambiguities. And since..."

[*Latin ed. p. 222*]

222. The Cathedral Chapter of Urbisvetana was most concerned that its rights should not be infringed; therefore, the Canons, assembled in chapter, unanimously proposed the following agreement:

"1. Whenever the death of any such guests or visitors occurs, especially of those holding a more distinguished rank, such as Cardinals, Bishops, Prelates, Princes of any dominion, and their relatives and connections, or other persons adorned with the highest honors of the court, whether men

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or women, whether concerning the funeral or the burial (where the law does not prohibit), the right to both shall belong to the Church, in its capacity as Cathedral Church, preserving and maintaining the fourth part of the funeral expenses for the parish priest of the deceased, according to and within the terms to be mentioned shortly.

"2. Guests and visitors of both sexes, who may be said to have acquired a domicile by virtue of the laws, such as those who perform some civic duty (commonly known as employees), lawyers, procurators, students, merchants, musicians, comedians, during the time they were present in the city, or those who have decided to remain in the city, girls residing in the Conservatories, and boys in orphanages, provided they do not have a family tomb, or if parents have chosen a tomb for them in their time (which time, according to the most probable calculation, is reckoned only during the lifetime of the aforementioned minors), and then artisans and craftsmen who have rented a workshop or house for a specified time to practice their profession, but with no intention of remaining permanently; all these, and any others who may be included within this enumeration, if they die in the city, within the parish where they reside, a full funeral shall be held for them, and indeed, burial, whenever the law does not oppose it; without any deduction of the fourth part of the funeral expenses due to the Cathedral Church.

"3. All others who lack any of the aforementioned characteristics or distinctions, whoever they may be, whether they come under the name of vagrants, or pilgrims, or are called by any other name, unless it is established that they have made other arrangements according to the laws, wherever they may pass away from this life, they shall be buried and interred in the Cathedral Church; preserving the fourth part of the funeral expenses due to the parish priest of the deceased, which is granted by law."

[*Latin ed. p. 223*]

On the 22nd of the month of Cisionis, in the year of Our Lord 1768, it was decreed that "only half of the wax should be taken, lit near the Cross." The Canons argue that Maria Bernabei, a pilgrim, should not be counted among those to be included, but that she did not have a domicile, nor even a quasi-domicile, in the parish of Saint Andrew; for they say that Maria did not come to Urbvetera every year to visit her mother, but rather, she visited her daughter in Viterbo each year. Indeed, because the daughter visited her mother rarely and for a short time, the Capitulars explain that the mother, after being abandoned by her daughter, instituted her nephews as her heirs. Against the parish priest, a certain lady, Emilia Cozza, testified in writing, stating that she had heard from Maria's daughters that when Maria was living in Rome due to illness, and despairing of her recovery, she said: "Since I must die, I want to die in the place where I was born." The Canons argue that these words do not sufficiently indicate the inten-

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tion of establishing a quasi-domicile, nor did the fact of her staying for almost three months before her death sufficiently demonstrate this. Therefore, the Capitulars conclude that the necessary elements for establishing a quasi-domicile were lacking: the fact was insufficient, and the intention was absent; because the three-month period is not sufficient to acquire a quasi-domicile. But above all, the intention was lacking; for when Maria came to her mother, she was gravely ill; and after her mother's death, she immediately and permanently expressed her intention to reside in Viterbo, ordering that the furnishings of the paternal home be moved there, as attested by Cleofes Calabresi, Maria's servant, and Clelia Leandri, a friend of the servant and of Maria's mother. Therefore, the Canons argue that they acted justly and deservedly in designating a priest to accompany the body to the chosen burial place in Viterbo; for the same right belonged to the mother church, and thus they followed the custom of deceased relatives who had desired that a priest, most devoted to the family, be associated with the burial.

THE RIGHTS OF THE PARISH PRIEST OF SAINT ANDREW. In opposition, the parish priest of Saint Andrew, having been presented with the same questions by the Chapter, pro-

[*Latin ed. p. 224*]

224. The arguments presented in Urbvetana lead to a conclusion in the opposite direction. Firstly, concerning the question of law, namely whether the Chapter of Urbvetana possesses the right, either by common law, or by custom, or rather by a special agreement with the clergy, to grant burial in the case in question, the answer is negative. The common law, which is relevant, cites the opinion of Ferraris, *Voc. Sepultura*, n. 22, 23, namely: "Pilgrims passing through and travelers, unless they have chosen a burial place, are to be buried in the Cathedral; but those who are foreigners or pilgrims who have a residence for some time in a parish, are to be buried in that same parish." This opinion is in agreement with the common teaching of the Canons, as found in Mattheucc, *De offic. Cur. eccles*, c. 48, n. 12: "A distinction must be made between those who have a residence in a place, and pilgrims passing through, so that the former must be buried in the parish in which they reside, unless they have chosen a burial place elsewhere." Nor is this different from the jurisprudence of the Holy See, for in Fulginati, on July 3, 1592, the Sacred Congregation and the Religious Congregation decreed: "Even by established custom, foreigners and pilgrims passing through, in cathedrals, and others who die within the parish, if they have resided there for some time, are to be buried." In Barclino, on January 13, 1730, the Sacred Congregation of Councils attributed to the parochial jurisdiction the right to bury the bodies of foreigners, aliens, pilgrims, and others who do not have a fixed domicile, etc., as well as those who have chosen a burial place, etc.; and in Ariminen, concerning the

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Sacraments and funerals, on March 24, 1888, in response to the question: "Does the parochial priest of the cathedral have the right to administer the Sacraments and to perform the funeral rites for those who are residing in the countryside, who die within the territory of the parish of Saint Nicholas, without having chosen a burial place?" The Sacred Congregation responded: "No" (1). And the reason for the decision, the priest stated, is clear; for parochial churches have a well-founded intention, based on law, to bury all those who die within the territory of their own parish; while, on the other hand, cathedrals, as it were by exception, have been recognized as having the right to bury those who are merely passing through the city, or who are residing there temporarily.

(1) *Eccles. Vol. XXI, 94.*

[*Latin ed. p. 225*]

In ORVIETO, on the 225th day, weakened by illness, they yield to fate. For these traveling individuals, belonging to no parish, it was fitting that, so they would not lack their own minister for the sacraments at the hour of death and for the funeral rites after death, they should be subject to the Cathedral Church, especially because of its primatial status and preeminence. Afterward, the advocate, addressing the question of custom, whether indeed this favors the Cathedral of Orvieto in a special way, notes that, for countless reasons, matters are handled in this way here in the Roman Curia, and not in favor of the Cathedral, and that, therefore, there is absolutely no basis for trusting in a peaceful custom. Indeed, in the year 1768, due to the death of a certain Albicini, a foreigner, a citizen of the Governorate, residing within the boundaries of the parish of St. Andrew, when the Cathedral Church claimed the right to the funeral, a lawsuit was instituted, and at the Rotunda, on January 2, 1768, a judgment was rendered in favor of the parish of St. Andrew, stating that "the bodies of the deceased are assigned to the parish priest of the collegiate church, reserving only those who, by chance, are vagrants or foreigners who die unexpectedly, and responding to the appeal of the Cathedral: 'In the judgments.'" Then, the advocate, in order to demonstrate how the Chapter cannot invoke any certain custom in its favor, brings up the case of the death of a certain Maria Bernabei, who, forty days after her arrival in Orvieto from Viterbo, died at the home of her grandmother, Carolina Benedetti. Indeed, the parish priest of St. Andrew, within whose boundaries, as already mentioned, is located the home of Benedetti, performed the funeral, and no one contradicted, and the body was given for burial, as is recorded in the parish register of the dead on January 13, 1880. The advocate, after discussing the value of common law and particular custom in the present controversy, proceeds to examine the acts of the Concordat, which he invokes as a decree and urges upon the Chapter. He immediately points out that all value could be taken away

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from the supposed Concordat of 1874, if one were to consider that here we are dealing with rights granted to the parish priests by common law, and therefore, these rights cannot be changed by agreement, neither by the Chapter, nor by the parish priests, nor by the Acts themselves.

[*Latin ed. p. 226*]

226 The Ordinary had permitted the aforementioned [matter]. Therefore, it was the intention of all to seek papal approval, which was not done, because of the immediate discord arising from the very terms of the Concordat, which could never have been demanded for execution. Thus, the pastors, in order to remove this source of contention and pretext for discord, proposed another draft of the Concordat to Bishop Ingami on December 15, 1888, while asserting that the old Concordat of 1874 had never been demanded for execution and that no one had feared to obey the law. The Bishop rejected the proposal of the pastors, but the matter remained without effect. Nevertheless, the pastors did not cease their efforts, and they again offered prayers to the then-seated Bishop Bucchi-Accica, that he might deign to enter into the desired agreement regarding the proposed matters. The result of these entreaties was that the Ordinary ordered and promulgated a certain list of funeral fees, confirmed by his decree. In this regard, the author notes that the fees now determined by the Ordinary are different from those proposed in the Concordat of 1874, which is not mentioned at all; therefore, he concludes that the Bishop himself has recognized that the old Concordat had no value. Indeed, in the records there is a certain declaration by the pastors, legitimately recognized by the Episcopal Chancery, in which they protest that the Concordat of 1874 had never been observed, as they openly demonstrate with other drafts of the Concordat proposed by the pastors. The Prelate Briganti, under whose administration this Concordat was proposed, in a certain letter addressed to the pastor of the Collegiate Church of St. Andrew, concludes that the agreement of 1874, or the funeral concordat, had never had the force of obligating; because it never obtained approval from the Apostolic See. Having thus answered the question of law, the author, turning to the question of fact, notes that Mary Benedetti Bernabei, a native, passing through and briefly staying in the city, cannot be called a resident, since she was of Roman origin and used to spend some time each year in her paternal home. And S. C. C. in Caven, on the day of February 7, 1733: Doubt: Whether the burial of those born in Caven and of outsiders.

[*Latin ed. p. 227*]

VITERBO. Regarding those who have not resided there for ten years, and who do not possess property within that city, and the matter pertains to either the parish priest or the Chapter; a response was given: Concerning travelers, pilgrims, and those who are merely passing through, it pertains

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only to the Chapter. In Decision 398, paragraph 5, before the Sacred Rota, presided over by Caprar, it is written: "It is more fitting, because the matter at hand does not concern the funerals of vagrants and pilgrims regarding which there might be doubt as to whether the parish priest has the right to assist, within whose parish they die, as Sánchez, etc., or rather, the Catholic Church, holds; but the question is about those who are outsiders who have a house open within the parish, such as Count Francis, concerning whose funeral there arose a dispute between the parish priest and the Chapter; in these circumstances, there is no doubt that the parish priest is assisted by the law, since it is not necessary for the deceased to have established a domicile within the parish in order to carry out the funeral rites, but mere residence is sufficient." The plaintiff urges these arguments even more strongly, because the case does not concern an outsider, but a native, who might perhaps be said to have considered that parish as his home, due to the house he had there, which he was accustomed to inhabit for several days almost every year, and which he had chosen as the place where he wished to die, saying: "Since I must die, I want to go to die where I was born." However, the Chapter, on the contrary, presents the testimonies of two women who assert that Lady Mary never said that she wished to establish her domicile there; and they cite the fact that after her mother's death, the aforementioned Lady herself took her household goods to Viterbo. The parish priest replies that the former testimony is purely negative; and that the fact of the removal of the household goods is not surprising, since she had her principal residence in Viterbo, and he presents another fact, namely that Mary did not wish to sell or rent her house, as they claimed. Then, the Chapter, using an argument that appeals to reason, recalls the statement of the law from which we receive the Sacraments while living, and after death, we must receive burial; therefore, it points out that if the Chapter has its right in such matters,

[*Latin ed. p. 228*]

228 The pastor of Urbevetana should have been genuinely concerned and convinced that he should have been present for three months before the death of Mary, attending to the sick and administering the Sacraments to the dying, forbidding the parish priest who was not her own to perform this ministry. But after the Chapter had allowed all of this to be done by the parish priest of Saint Andrew, it does not appear by what right he could claim the right to the funeral; for he who enjoys the benefit should also bear the burden. Furthermore, considering the merits of the matter, it is noted that the deceased had designated her own place of burial, namely, the cemetery of Viterbo, and therefore excluded the Cathedral Church of Urbevetana. Consequently, the parish priest of Viterbo, her own priest, would have had the right to take up the body and accompany it to burial; which, since he was unable to do so, the right passed to the parish priest

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of the place where she breathed her last, especially if she received the last Sacraments there. For the parish priest has a right, founded on intention, to bury bodies, against anyone, and the Cathedral Church has only, as if by privilege, the right to bury and inter corpses of pilgrims who have chosen a burial place elsewhere; as was openly decreed by the Sacred Congregation under the date of December 22, 1866, in the case concerning the right to bury a body, in which, within this Chapter, this right of burying the body of a deceased pilgrim was claimed, who had designated a pagan tomb for himself in his own country; and the parish priest of the place where the pilgrim had died, with the doubt proposed: Whether and to whom the right to bury the body belongs in this case; it responded: Affirmatively, in favor of the parish priest of Saint Juvenal. From this decision, the pastor of Grado draws an argument to the ultimate question; namely, to whom belongs the right to bury the body in the cemetery of Viterbo, and he notes that the right in the aforementioned decree was asserted for the parish priest. Indeed, in that case, it was a matter of the body of a pilgrim, which should have been buried in the Cathedral, according to accepted custom, unless he had designated a different burial place for himself; and the special choice of burial is known when the body has already been brought to the Cathedral Church, and the funeral has been performed. Therefore, considering the body of the deceased...

[*Latin ed. p. 229*]

URBEVETANA 229: Truly, as if in a place of deposit, the question was raised whether the right to associate [the body] with the burial belonged to the Chapter, or rather to the parish priest. Therefore, the advocate concludes, even granting, but not conceding, that the right of burial in this case belonged to the Cathedral Chapter, it would not follow that the same Chapter had the right to associate the body with the chosen burial place; for legally, one privilege does not imply another, as decreed by the Sacred Congregation of the Council in the aforementioned case. This matter is so clear, the parish priest states, that the same Chapter declared in a chapter meeting that it had appointed another priest to associate the body, because the parish priest of St. Andrew's had not requested it in any way; and it is known that the Chapter itself forbade the curate, lest he associate the body with the burial, in order to avoid complaints from the parish priest of the Collegiate Church of St. Andrew. Relying on these rights, the advocate requests not only a judgment in his favor in this legal dispute, but also the restitution of emoluments unjustly received by the Chapter. With these premises, the following questions were proposed for consideration: I. Does the Cathedral Church have the right of burial in this case? And, in the affirmative: II. Does it have the right to associate the body with the chosen burial place, outside the diocese, in this case? And, in the negative, regarding both: III. Is there a place for the restitution of emoluments for the

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burial of the deceased in this case?

RESOLUTION: The Sacred Congregation of the Council, after deliberation on the matter on August 11, 1894, decided to respond: to I and II, negatively; to III, affirmatively, deducting expenses.

[*Latin ed. p. 230*]

230 BE J E N. DUBIA REGARDING THE PROPER BISHOP FOR S. C. C. ORDINATIONS. August 11, 1894. Through a summary communication. Under the date of April 26, 1894, the Bishop of Beja, S. C. C., proposed the following doubts: "The Portuguese government is accustomed to permanently appointing to the parochial treasuries those who have completed the course of studies in the minor seminaries, so that in them they may receive patrimonies for the reception of the sacred orders. "These treasuries, as it seems to me, do not truly represent ecclesiastical benefices, but rather, undoubtedly, pensions, since they have revenues from which the support of the ordained is drawn. "With these premises, I respectfully request Your Eminence to consult with the Sacred Congregation of the Council regarding the following doubts, the affirmative answers to which would be very beneficial for the good of this Diocese, where vocations to the priesthood are rare. "Doubt 1: Can the Bishop, according to the decision of the S. C. C. of August 2, 1721, § 5, ordain his own family member, who is not a subdeacon, to a title of pension, if he has previously obtained from the government a perpetual treasury for his own use, to be enjoyed in his own Diocese? "Doubt 2: Can the Bishop, according to the decision of the S. C. C. of September 17, 1791, § 7, if these treasuries, given their apparent perpetuity, can still be considered as benefices, ordain a young man who is not a subdeacon, when in his own Diocese he has obtained from the government a parochial treasury, to be held in perpetuity? "Therefore, I remain with great hope, Most Reverend Lord, that You will be willing to heed my prayers, and finally, that You will be merciful to me, since necessity alone has compelled me to be a nuisance to Your Eminence at this time." SUMMARY OF THE MATTER.

[*Latin ed. p. 231*]

231 B, E, J, K, N. Since deliberation on the legal effects of a benefice or pension concerning the proper Bishop could not proceed without a clear understanding of the nature of this benefice or pension, on May 22nd of this year, the Bishop was consulted on this matter; and he responded as follows: "Obeying the commands of the Most Holy Fathers of the Holy Council, in response to your Eminence's letter of May 22nd last past, I must answer in the following manner: "1°. Parochial treasurerships consist of the offices of sacristans or custodians of individual parochial churches, with the annexed right, perpetually, to receive certain offerings and annual revenues, legitimately prescribed by custom, and furthermore supported

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by civil law. "2°. They are established in the parochial churches where they exist. "3°. They depend solely on the civil authority, with regard to nomination or presentation, which is not made except with the prior consent of the Ordinary, who subsequently sends each of those presented or nominated into possession of the parochial treasurerships, or sacristanships. The title by which the civil authority nominates or presents to the parochial treasurerships is the principal law, or the organic law of the Kingdom of Portugal, by which the same authority also nominates or presents to all ecclesiastical offices. In this respect, the parochial treasurerships depend on the civil authority, while in all other respects they depend on the Ordinary. "4°. Parochial treasurerships, undoubtedly, have been substituted for the ancient benefices of sacristans and custodians of parochial churches." O. Concerning the doubt, namely: "Whether the Bishop, by the decision of the Holy Congregation of Councils of August 2nd, 1721, § 5, can ordain his own family member, who is not subordinate to him, to the title of a pension, if he has previously obtained a perpetual treasurership from the Government?" THE TREASURERSHIPS ARE NOT TRUE BENEFICES.

[*Latin ed. p. 232*]

232 BEJEN. Can he ordain a member of his household within his own diocese? The words cited in § 5 from the decision of August 2, 1721, are as follows: "It is added that the same Council of Trent, session 23, chapter 9, decreed that the Bishop cannot ordain a member of his household who is not under his jurisdiction, unless he has resided with him for three years and immediately confers upon him a benefice; and in a matter debated in this Sacred Congregation, whether it would suffice for ordination if the Bishop conferred not a benefice, but a pension upon him; and the answer was affirmative, as is noted in Fagnan, in chapter 'Ad audientiam,' no. 19, concerning 'Rescripts.'" But how can the Bishop now adhere to this provision, as the following words in the same page of the cited cause indicate: "According to the often-mentioned Bull 'Speculatores,' the Bishop cannot promote a member of his household who is under the jurisdiction of another diocese to the minor or sacred orders, unless he confers upon him a benefice sufficient for the support of life for more than three years of service." But in a matter debated in this S. C. on June 27, 1697, concerning the ordination of a member of the household who had served for three years to the sacred orders due to the necessity or utility of the Church, without conferring any ecclesiastical benefice, under the new Constitution 'Speculatores'; the S. C. gave a negative response... and what was resolved by the S. C. in the case of a benefice is also extended to the case of a pension, so that after the Bull 'Speculatores,' cited above, the ancient resolutions no longer have any place, as testified by Monac. in 'Form. part. 1, tit. 3, form. 17, no. 1: 'Therefore, because after the Constitution 'Speculatores,' which restricts the old common right, the jurisprudence of the S. C. is constant and

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firm that not a pension, but a true and proper benefice must be conferred upon the cleric ordained by his own Bishop from the title of familiarity'; for the words of the Pontiff in the cited Constitution are very clear, namely: '...and moreover, he must confer upon him, without any fraud, a benefice sufficient for his support of life, according to the manner defined above, immediately, that is, at least within one month from the day of the ordination, etc...'"

[*Latin ed. p. 233*]

It seems advisable to respond negatively to the first question posed by the Bishop. Regarding the second question, "whether a Bishop, according to the decision of the Sacred Congregation of the Council, dated September 17, 1791, § 7, if these funds, viewed in their perpetual nature, can still be considered as equivalent to benefices, can ordain a young man who is not subject to anyone, when in his diocese a parochial fund has been obtained from the government for perpetual possession," it should be noted that the paragraph cited by the Bishop reads as follows: "It is not doubtful that a Bishop can confer a benefice upon one who is not subject to him, with the testimonials of his Ordinary, provided that the income of the benefice, after deducting the expenses, reaches the synodal tax for sacred property; for this is expressly stated in the Constitution *Speculatores*..."

As for favoring the Bishop's position concerning Sutri, it would seem that the income of the benefice should be considered in relation to the Sutrian tax, since we are dealing with a benefice that provides a livelihood, as declared by Innocent XIV in the Apostolic Constitution *Ministerii*, § 7, and confirmed by Benedict XIV in *De Syn. Dioec.*, book 12, chapter 9, § 2. The Constitution *Speculatores*, however, states: "Its [the benefice's] income must be sufficient, after deducting expenses, for a suitable livelihood, either according to the synodal tax or, if that is insufficient, according to the custom of the region, for the purpose of promoting individuals to the sacred orders, and it must be able to be peacefully possessed without any need to supplement what is lacking from the fruits of the same benefice, even with the addition of a very rich patrimony that the one being ordained would obtain in the same or any other diocese, and the Bishop who ordains in this way must make mention, both in the aforementioned testimonial letters and in the usual attestation of the conferral of orders, of the income of such a benefice."

Therefore, it also seems advisable to respond negatively to the second Bishop's question, because the Bishop himself doubts whether such funds can be compared to benefices; in this case, the law or general prohibition applies that such ordinations should not be made without the conferral of a benefice, especially since it is not clear from the Bishop's report whether

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the income is sufficient.

[*Latin ed. p. 234*]

234. Regarding the sustenance of life; which sufficiency is particularly sought by the *Constitutiones Speculatores*. THE TREASURIES ARE CONSIDERED TRUE BENEFICES. But, on the contrary, if the inner nature of these treasuries is examined more closely, it becomes clear that they can rightly be called benefices, for it is agreed among doctors that pensions which are paid by the civil government in certain regions to sacred ministers, due to an obligation assumed with the Church, for the ecclesiastical duties they perform, ought to be considered as benefices. For the Sacred Penitentiary, in this sense, responded on January 19, 1819, truly to a question posed in these words: "It was asked of the Sacred Penitentiary whether the salaries paid in Belgium to pastors and canons have the nature of benefices or ecclesiastical goods, and whether they involve an obligation to spend the surplus for the poor or pious causes, and to remain under penalty of not making their fruits." The Sacred Penitentiary responded: "It has already been decreed by the Holy See: affirmatively." Therefore, in this regard, the Bishop ordaining does not require the fulfillment of the condition of three years of familiarity with the *Constitutiones Speculatores*, conferring within the legitimate time such a treasury. I say in this regard; because it is also necessary that the revenues of these treasuries be sufficient. The Bishop says nothing in his letters about the sufficiency of revenues; but I believe that this can be inferred from the circumstance related by him, namely that these treasuries are usually conferred upon clerics in the title of Holy Orders. However, there is no doubt that the Bishops do not observe the most serious prescription made by the Council of Trent in session 21, chapter 2 on Reform, concerning the sufficiency of the revenues of such a title, expressed in these words: "Since it does not befit those who are dedicated to the divine ministry to beg or to engage in some sordid pursuit; the Holy Synod decrees that no cleric, although otherwise suitable in morals, knowledge, and age, shall be promoted to the sacred Orders, unless it is legitimately established that he peacefully possesses an ecclesiastical benefice which sufficiently provides for his livelihood." Therefore, nothing seems to be lacking in the treasuries.

[*Latin ed. p. 235*]

BEJEN. 235 concerning the requirements for the necessary granting of a benefice to an ordained cleric, with a triennial period of familiarity. From what has been stated, it seems that a positive response is also indicated to the other Bishop's inquiry; since the *thesaurariae*, insofar as they constitute sufficient benefices, establish the Bishop's own *S. Ordinationis* [Sacred Order], by virtue of the ecclesiastical benefice, according to the pro-

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visions of *Const. Speculatores*, with all rights of common law being observed. Indeed, another title of *S. Ordinationis* may be discovered in such a *thesauraria*. The Bishop refers to this in the final paragraphs under number 2: "Incardination is important in parochial churches, where they are established," that is, benefices that are properly residential. These benefices, therefore, determine the domicile for clerics, and domicile constitutes almost the principal title of *S. Ordinationis*. But according to the will of *Const. Speculatores*, besides the fact of residence for acquiring a domicile, a perpetual intention of residing is required, if nothing prevents it. Therefore, the Bishop, in this case, ought to demand an oath from the cleric invested with the *thesauraria*, confirming his intention of retaining such a benefice, and thus he would render the cleric subject to *S. Ordination* by reason of domicile. With the foregoing points noted, the question was asked: what response should be given to the doubts proposed by the Ordinary?

RESOLUTION. The Sacred Congregation, after deliberation on August 1, 1894, decided to respond: To the first and second, affirmatively; provided that it is established that the *thesaurariae* are truly and properly benefices.

FROM WHICH YOU MAY GATHER:

I. After the *Bulla Speculatores*, by which common law is restricted, Bishops cannot confer sacred orders, unless the cleric has been invested with a benefice properly so called.

II. From the responses of the Apostolic See and the opinion of authors, pensions can be included with benefices, which are paid by the civil government to sacred ministers for the ecclesiastical duties they perform because of the obligation assumed towards the Church.

III. These requirements do not seem to be lacking in *thesaurariae* granted in tenure, which are conferred by the government to sacred ministers who have the custody of the Church.

[*Latin ed. p. 236*]

236 NETO. ELECTION. On August 11, 1894. Session 25, chapter 9, concerning Reforms. SUMMARY OF THE CASE. In the city of Neto, the Church of Saint Nicholas was enriched by certain endowments through the will of a certain Charles Giavanti on August 29, 1606; therefore, by a Bull issued by Pope Paul V on May 21, 1609, under the title *In supremae*, the same Church was established as a Collegiate Church, enjoying the canonical right of patronage, both active and passive, for all those born and baptized in that city. Because Pope Gregory XIV, through a Bull, elevated the Collegiate Church of Neto to the status of a Cathedral, a question arose as to whether, notwithstanding this change, the right of

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passive patronage still remained intact with regard to the citizens of Neto, and this controversy was presented to the Sacred Congregation for a decision on the following point: Does the right of passive patronage extend to the aforementioned canons, established by the favor of the citizens of Neto, through the provisions of Pope Paul V? And the response was: Affirmative, with regard to the canons established by Giavanti, who were to be presented by the chapter. By virtue of this power, the chapter proceeded on November 9, 1893, to the election of a vacant canonry, the outcome of which election is the subject of the present controversy. For, having legitimately convened the chapter members, all were present, namely eleven in number, who, after observing the customary procedures, proceeded to the election by secret votes, of which five were favorable to the Priest Salvator Guarino; four were favorable to the Priest Francis Ciulla; and of the remaining two votes, one was given to Saint Peter, and the other was blank or null. Subsequently, with no one dissenting, the election was publicly announced, resulting in the election of the Priest Guarino. However, when the outcome of the election began to be made known, some began to suggest a doubt regarding the nullity of the election, because there was no absolute majority of votes.

[*Latin ed. p. 237*]

NETEN. 237 est constitutum per undecim capitulares et sex suffragiis. Cum huiusmodi dubium vehementer commoveret partem faventem Sacerdoti Ciulla, et rumores crescerent, statim Capituli Praepositus, qua prima dignitas, iterum capitulares convocavit ad deliberandum de quaestione promota super validitate peractae electionis, decidendo an maioritas votorum deberet esse absoluta seu aestimata absolute iuxta numerum votantium, an potius relativa, scilicet perpenso tantummodo numero votantium per schedulas positivas, seu exclusis albis seu vacuis. At animorum dissensiones, quae electionem praecesserunt et aliquantisper secutae sunt, non permiserunt pacificam dubii discussionem, unde capitularis conventus controversiam potius asperiorem reddidit. Tunc Franciscus Ciulla, de suo bono iure magis confidens, recursum habuit ad S. C. C. sub die 12 Ianuarii 1894 petens, primo loco, electionem nullam declarari, quia maioritas votantium revera Sacerdoti Guarino non favebat iuxta sacros canones; et secundo loco effigiens ut huiusmodi electio improbaretur alio ex capite; scilicet quia servata non fuit consuetudo nominandi absque electione ad canonicatum vacantem, seniorem ex Mansionariis, quae consuetudo in casu favebat ipsi actori. Loci Ordinarius manifestavit suam sententiam favorabilem validitati electionis Sacerdotis Guarino. Posthac Episcopo rescriptum fuit sub die 22 Februarii 1894 ut partibus praefigeret congruum tempus ad deducenda sua iura, nec non ut capitulum interrogaret circa praxim huiusmodi electionum et an aliquid statuerint capitulares constitutiones vel particularis consuetudo.

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Episcopus iussa faciens partium deductiones transmisit. Opportunum vero non arbitratus est a Capitulo collegialiter congregato exquirere votum, ob plane certum discordiarum exitum, sed potius a singulis exquisivit votum in scriptis exarandum. Capitulares huic praecepto obtemperarunt, at ex votis exaratis et S. C. C. transmissis patet, capitulares per suam sententiam favere illi parti cui iam per votum favorabiles extiterunt. Verum sufficienter constat constitutiones capitulares nihil de hac re praecipere.

[*Latin ed. p. 238*]

238. Furthermore, custom does not signify whether the majority of votes should be absolute or relative; therefore, the solution to this question must be sought in the principles of common law. Regarding the other point, namely, whether a constant and legitimate custom establishes that the senior member of the canons, without election, is accustomed to be named to a vacant canonry, all assert that this custom exists, but it is not so firm and juridical that the chapter cannot, at its discretion, sometimes deviate from it, as some more recent examples demonstrate. The *Disceptatio Synoptica Actor* contends that the priest Guarino did not have either the majority or the healthier part of the canons, as required by law, and this is expressed by Cl. De Angelis, Vol. I, part. 1, ch. 1, p. 135, namely, that a valid election must be carried out by the majority and the healthier part of the chapter. However, it must be noted that the majority must be absolute, that is, of all those present. Therefore, it is argued that in this case, the absolute majority was lacking, for which five, but six, votes were required; but also that the healthier part was lacking, since from the declarations made after the secret votes, it is clear that all the dignitaries and more respected canons were favorable to him, namely, the Provisor, the Penitentiary, the Canon Theologian, and the Cantor. Indeed, this further confirms that the majority was lacking, because two white ballots, which were ultimately considered contrary to Guarino, should not have been counted; for they were given to a third person, in which case they would not, by themselves, imply the rejection of another, but explicitly withdrew from the person of Guarino. Then, it recounts more facts to prove the violence, fraud, and solicitations employed by the supporters of Guarino to obtain votes for him, but I do not wish to dwell on such matters, since in such cases, what is asserted by one side is denied by the other, and the opposing actions are no less improper; this contention proves only one thing, that this election was carried out with great passion and with the ardent zeal of the parties. *DEDUCTIONS OF FRANCIS CIULLA*.

[*Latin ed. p. 239*]

NETEN. 239 But it is not certain that simony was present, nor that fraud or absolute force vitiated this election. However, regarding the other aspect of the matter, namely the right of the plaintiff to obtain the benefice without

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a properly constituted election, it recalls an older custom, confirmed by the procedure of the chapter which considered the senior among the canons to have precedence, so that he should be named to the vacant canonical benefice. It cites certain exceptions made in favor of the Minister of Ceremonies of the Bishop, after the Church of St. Nicholas was raised to the dignity of a cathedral; but it notes that both aspects are consolidated in this case, and therefore it was not permissible for the chapter to disregard the ancient custom, which was based on a certain equity, namely, that the Minister of Ceremonies received almost no compensation, to whom a canonry of the cathedral church was assigned as remuneration. Moreover, the priest Guarino, as a parochial chaplain, has revenues sufficient for his ministry, and is not impoverished. DEDUCTIONS FROM THE PRIEST GUARINO. On the contrary, the priest Guarino notes that the election proceeded with all the formalities and requirements of the law observed. First of all, he points out that there was a majority of votes for the legitimate election, which majority is relative if the two voters who submitted blank ballots are also considered; but it is better to consider it absolute, because he argues that those two votes should be considered as not given. For, he says, "he who puts a blank or empty ballot into the urn openly renounces his right to vote, as the Canonists teach." Indeed, Passerinus, in *De Electione*, chapter 19, paragraph 11, says: "Therefore, no account should be taken of the votes of those who withdraw from the place of election... nor of those who gave a blank ballot, because this is a renunciation," and then, in paragraph 11, he continues: "if there are ten electors in the chapter, and three of them give such useless votes, they must be deducted, and the election should be judged as if there were only seven electors, and so, if then one of the four remaining is named, he should be considered named by the majority." And Ferraris, under the word "Election," paragraph 16, writes:

[*Latin ed. p. 240*]

240. OBJECTION. "If someone inserts a blank ballot into the common ballot box, the election will still be valid; because he who submits a blank ballot is considered, by law, to have renounced his right [to vote]." Furthermore, if the majority is not lacking, nor is the healthier party lacking, the assembly proceeds. Since the votes are secret, it is surprising that the advocate presumes to scrutinize the intentions of those who voted; but by presumption of law, because of the secret votes, the party that was larger is presumed to be the healthier one, according to the intention of chapter 14 concerning Elections. Nor does it concede that the more worthy members of the chapter, through their own confession, were favorable to the opposing party, for it is known that the Prefect of the chapter declared that he would give neither party his favorable vote, because he considered both equally deserving. As for the second part of the advocate's argument, it is noted that he cannot vindicate a right to the nomination of the benefice

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based on being the healthier party; since both, under the laws of the Royal Patronage established on October 13, have been invested in the benefice, having received canonical possession on November 1 of the same year. But, even granting, but not conceding, that Mansionarius Ciulla had precedence due to seniority, he will never be able to prove that the right to the benefice exclusively and in his own sense belongs to him, because this chapter never recognized such a right, as is demonstrated by the actual election of the chapter's treasurer, who was not elected as Mansionarius to the canonical benefice. Therefore, it must be concluded that this is not a matter of strict law, but of simple equity. With these considerations in mind, something has been added ex officio. The sentence of the Reverend De Angelis, cited by the advocate, concurs with Reiffenstuel, Title on Expulsions, n. 138, who says: "The majority of the chapter is considered to be that in which there is the greater number of those electing, with respect to the entire chapter present. And it is expressly added, with respect to the entire chapter present; first, because no account should be taken of those who are canonically summoned but are absent, since they have declared themselves absent, c. With us, on the 19th of the month; and second, because it is not sufficient, by law, to have a greater or larger number of votes in comparison to the other, smaller party, as the clear text of chapter 48 of your Church states, but a greater number of votes is required with respect to the entire chapter, so that if there are twelve..."

[*Latin ed. p. 241*]

NETEN. 241 voices are required; at least seven votes are necessary. c. C Uman, 50 hours. t. and c. Si cui, 23 hours. t. in 6. Furthermore, this majority must not only be greater, but also more sound, as Reiff explains in the aforementioned passage, n. 142: "That part of the chapter is considered more sound which is more just, and which relies on greater reason and authority, according to the Glossary, cap. in Genesis § /i. t., or, as others explain, the more sound part of the chapter is said to consist of men distinguished by dignity, age, and length of service, as well as by greater prudence and piety; for those who excel in these qualities have votes of greater weight, as the Abbot says, c. Eccl. Vestra 57, n. 11 hours. t." All of these factors seem favorable to the actor's intention, especially since it is certain that there have been no small contentions, from which the chapter has clearly indicated that it wishes to abstain. On the other hand, the consideration of the majority of votes is a necessary consideration for the convention, so that no room is left for ambiguity. For, indeed, an absolute majority is required, that is, taking into account the absolute number of votes, but this number is not the number of chapter members in general, but is the number of chapter members who legitimately cast their votes in that particular chapter meeting; therefore, if some of those summoned do not attend, or if those present, in the act of election, withdraw or, for some other reason,

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abstain from voting, then the majority must be determined by the number of chapter members who are actually casting their votes. Hence, Reiffenst. in the aforementioned passage, under number 241, says: "If anyone submits a blank ballot, or one on which the name of no candidate is written, no account shall be taken of it. This is derived from d. c. Cum nobis 19 hours. t., and is noted in the Glossa magna in Clem. Quod circa 6 hours. t.; Navarrus Consil. 7 de Elect. n. 1; Rodericus, vol. 2, qq. Reg. quaest, art. 13; Layman, in the aforementioned passage, n. 3, and others. The reason is: because he who submits a blank ballot is considered to have renounced his right." And from this perspective, the majority is considered relatively. However, it is not permissible to doubt that the majority must be intrinsically sound. It should be noted, however, that this requirement is more frequently emphasized in the Decretals; as the election flowed through the Acts, Vol. XXVII, fase. OCCXVI. 16.

[*Latin ed. p. 242*]

242. VOTES. Votes were not secret, but subject to a threefold comparison, namely, merit compared to the merit of the elect, zeal compared to zeal, and number compared to the number of electors; therefore, the majority necessary for election was not based solely on the number. With the introduction of secret votes, almost only the comparison of numbers remains; therefore, as Reiff states, in the cited passage, no. 143: "Furthermore, in cases of doubt, the larger part, by number, is also presumed to be the sounder opinion." Since presumption must yield to truth, in order to undermine the majority based on numbers, it would be necessary to demonstrate with irrefutable arguments that the larger part of the votes had been obtained through deceit and fraud. With these points noted, the following questions are to be considered: I. Whether the election is valid in this case. And, to the extent that it is negative. II. Whether the passive nomination of Francis Ciulla is valid for a canonical benefice in this case. RESOLUTION. The Holy Congregation, after deliberation on August 1, 1894, decided to respond: To the first, affirmatively; to the second, with the provision stated in the first (1). MALAGA REGARDING THE VALIDITY OF A DISPENSATION FROM A MARRIAGE IMPEDIMENT. On June 16, 1894. Through summary reports. The Vicar General of the Bishop of Malaga humbly presents the following case to the Holy Congregation, submitted to him by a priest from that diocese: "Raymund Rodríguez, a bachelor, and Mary Sánchez, a widow, who had a daughter from a previous legitimate marriage, named Carmel Garcia, entered into marriage. SUMMARY OF THE FACTS. (1) Recole, Vol. VIII, 389; I X, 158; X, 273; XIII, 390; XV, 100; XVIII, 97; XIX, 68.

[*Latin ed. p. 243*]

MALAGA, 243: "After the death of Mary, Raymond, already a widower, and his stepdaughter, Carmela, having become free, entered into carnal

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relations, and for several years they lived an incestuous life, begetting three children. When the man was at the point of death, a priest was called, who, knowing that the impediment of affinity in the first degree of the direct line is not included among the most recent faculties granted by the Roman Pontiff to Bishops, and delegated to the parish priests in this diocese, nevertheless, adhering to the doctrine of St. Alphonsus concerning dispensations, especially in articulo mortis, and considering the practice of the Holy See, which has sometimes granted American Bishops the faculty of dispensing in such cases, as Lemkhul, Moral Theology, Tract on Marriage, states, and being more certain, he joined Carmela in marriage to Raymond, and before the entry was made in the parish register, he reported the matter to my tribunal. The following day, Raymond died. Carmela and her children are poor and miserable. After considering all things, it seemed more fitting to me to submit the entire matter to Your Eminence, by proposing the following questions and humbly requesting a resolution. I. Whether the marriage between Raymond and Carmela can be considered valid, and whether it should be recorded as such in the sacramental register. II. If not, whether a healing of the impediment should be requested and granted for the legitimization of the three children."

A Synopsis of the Discussion: The validity of the dispensation in this case seems to support the general principle of law, solemnly confirmed by the Council of Trent, Session 14, On Penance, 7; namely, that in articulo mortis, there is no reservation, lest anyone perish on this occasion; for all power is given, not for destruction, but for edification. Therefore, at least based on the presumed delegation from the Roman Pontiff, the priest seems to have been able to absolve Raymond from the impediment of affinity in this case.

[*Latin ed. p. 244*]

In MALAGA, but this reasoning, upon which the parish priest relied, is founded on nothing solid, if one considers that the Holy See has never granted a dispensation in cases of impediment due to affinity in the first degree of the direct line of affinity. Therefore, the Sacred Congregation of the Council, in the *Matrimonii* of Liège, on May 28, 1796, states: "It is certainly an obstacle to such a dispensation in the first degree of the direct line of affinity that it has been requested a hundred times by the Holy Father, and has been denied each time, even against the will of the Holy Office; although it has been requested by great princes and a union has taken place between those related by affinity. Therefore, regarding the proposed question: Whether and how one should proceed concerning a dispensation regarding an impediment of a prior degree of the direct line of affinity in a case, it responded: Negatively." Indeed, even now, among Doctors, there is a debate as to whether this impediment is of ecclesiastical or divine law, and although a greater number of Doctors recognize it as only an impediment of ecclesiastical law, nevertheless, they are unanimous

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in admitting that, due to the great indecency, the Church does not have the faculty of dispensing, nor has it used it. Consistent with this doctrine is the most recent faculty granted to Ordinaries, through the Apostolic Letter of February 20, 1888 (1), namely, to grant dispensations, either by themselves or through others, with the necessary precautions, in articulo mortis, when there is not time to appeal to the Holy See, regarding any impediments, except for the sacred order of the priesthood and affinity in the direct line resulting from a lawful marriage. Therefore, there is no obstacle to the faculty granted to the Bishops of America to grant dispensations in cases of impediment due to affinity, because there, it is a question of such an impediment arising from an illicit union, as Lemkul, *Theol. moral, de matr.*, n. 298, states. Therefore, in the 2nd question, it is asked in vain about a healing at the root in a case in which, setting aside other reasons, an impediment arises from the aforementioned points of law. With these observations, the question was raised as to how one should respond to the proposed questions. RESOLUTION. The Sacred Congregation, after deliberation on June 16, 1894, decided to respond: Negatively to both.

(1) *Recole*, Vol. XX, 543, and Vol. XXI, 696.

[*Latin ed. p. 245*]

MALACITANA 245. From which matters one may gather:

I. Even in the article of death, Bishops, or those delegated by them, cannot grant a dispensation, for entering into marriage, concerning the impediment of the sacred order of the priesthood, and of affinity in a direct line, arising from a lawful union.

II. The Roman Pontiff, although possessing the power to grant a dispensation concerning the impediment of affinity in the first degree of the direct line, arising from a lawful union; has nevertheless never used this authority, due to the greatest indecency.

III. A dispensation is usually granted at the root by the Apostolic See, when it is established that a marriage, actually entered into, has appeared to be a true marriage.

IV. In this matter, besides the existence of an impediment, concerning which the Church has never granted a dispensation, there was entirely lacking the appearance of a true marriage; since it was only a question of an incestuous commerce between a stepmother and stepchild.

From the SACRED CONGREGATION OF RITES of NEAPOLITANA, or LYCIA. Decree concerning the Beatification and Canonization of the venerable servant of God, Bernardinus Realinus, a priest of the Society of Jesus.

CONCERNING THE DOUBT: By what miracles is it established in this case and to what effect does it pertain? The Apostle's precept: "In all things shew thyself an example of good works, in doctrine, in integrity, in gravity,."

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was clearly held in the mind of the venerable Bernardinus Realinus. He, having lived and conducted all the affairs of his life most holily, clearly demonstrated this. He was born in a family of the highest honor, in the year one thousand five hundred and thirty, after the birth of the Virgin; he spent his childhood most piously; and, having been distinguished both in doctrine and in virtue, he devoted himself to studies, although he was supremely dedicated to public duties, and to a particular Christian...

[*Latin ed. p. 246*]

246 From his very youth, he never allowed himself to be drawn away from or diverted by the pursuit of integrity of morals; whether he exercised his authority in several prefectures of the Padane region, scarcely more than a young man; or whether, having gone to Naples, he devoted himself to vicariate duties in establishing and regulating several towns. When he reached the age of thirty-three, he sent word that he was leaving worldly affairs, and, seeking refuge in the Society of Jesus, which he loved exceedingly, he so quickly embraced the path of religious perfection that he soon became its most distinguished member; and, entirely intent on the increase of divine glory and the salvation of souls, the apostolic man was held in esteem and constantly shone as an example to others. For, thanks to the immense virtue, especially charity, humility of heart, devotion to prayer, and contempt for himself, he was able to inspire the minds of others, beyond what anyone would believe, with such admiration that he could reconcile a great reputation even among hostile nations. As a result, not only did Bellarmine and other Cardinals, Kings of Poland and of France, Dukes of Parma, Mantuae, and Vindelicia, and countless other men of outstanding dignity and virtue, bestow great honors upon him, granting him letters and entrusting themselves to his counsel in matters of the most delicate and difficult nature; but also Pope Paul V, the Supreme Pontiff, adorned his outstanding virtues with his praises, and more than once wished to recommend him to the prayers of Saint Bernard. Indeed, he had so captivated the attention of everyone that even his enemies were compelled to admire him, and the most distinguished servants of Christ, who, endowed with the gifts of divine light, were not moved by the applause of men nor by adversity, but looked to nothing more than to conform themselves to the image of the Son of God, welcomed his labors with joy and devoted all their talents to that purpose, so that even the hardest hearts might be softened by him, and turned to the cultivation of piety, and that they might, with all their strength, constantly strive to achieve it. And the glory, which, as Jerome testifies, follows virtue as its shadow, did not cease to accompany him during his life, but, supported by heavenly gifts, wonderfully increased day by day, after the blessed death of Realini, who, worn out by his labors rather than by old age, on July 13, 1616, the day after the Kalends of July, on the very feast of Our Lady of the Hospitaller, whom he had diligently

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venerated as a most beloved mother, exchanged his mortal life for eternal life. Moreover, his tomb has increased in honors, due to the crowds of people who visit it, and also due to the miracles that God has wrought through his intercession.

[*Latin ed. p. 247*]

From the Sacred Rites, it was held that his faith had been demonstrated by his virtues. Therefore, the opinion of his sanctity and of his piety before God was deeply ingrained in the minds of all, and was confirmed by numerous miracles, so that even in Lecce, the dying still called Realino their patron and invoked him, and widely proclaimed the testimony given by Christ: "Otherwise believe for the very works' sake. Amen, amen, I say to you, he that believeth in me, the works that I do, he also shall do: and greater than these shall he do." Therefore, for the cause of his Beatification, which had been rightly introduced before the Sacred Congregation of Rites, and after the necessary investigations had been carried out, the controversies properly resolved, and all other requirements fulfilled, as prescribed by established custom and the decrees of the Supreme Pontiffs, an inquiry was initiated into the singular manner of his life, his impeccable morals, and his outstanding deeds, by which the venerable Bernardine shone, and was an example and help to the Church; and the blessed and revered Pope Leo XII solemnly declared that his virtues had reached heroic heights, by decree dated the eve of the Kalends of June, in the year 1828.

Then, to complete the examination of the miracles which were presented, concerning the venerable servant of God, seven sessions were held: namely, two preparatory meetings before the Most Reverend Cardinal Charles Sacconi, the Relator of the cause, on the twelfth day before the Kalends of August in the year 1868, and again, after the cause was resumed, on the seventeenth day before the Kalends of September in the year 1892, before Cardinal Caietan Aloisi Masella, Prefect of the Sacred Congregation and Promoter of the Cause, who had taken the place of Cardinal Sacconi, who had since passed away; three preparatory meetings were also held in the Apostolic Palace at the Vatican, on the day before the Ides of January in the year 1875; on the day before the Kalends of March in the year 1893, and on the fourth day before the Nones of August of the same year; finally, before the Most Holy Pope Leo XIII in the same Vatican Palace, on the day before the Kalends of May in the year 1878, and on the third day before the Ides of March in the year 1894, the final examination of the miracles was duly held, in which the Most Reverend Cardinals and the Consultors of this Sacred Congregation, having been summoned to general meetings, each gave their vote. His Holiness, after hearing the opinion of all, did not immediately declare his mind on this matter of such importance, but urged everyone to earnestly implore the help of heavenly clarity in this most serious judgment, through fervent prayers.

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Today, on this Wednesday, the twenty-sixth day after Pentecost, when the feast of Saint Stanislaus Kostka is celebrated, and the Holy Sacrifice of the Eucharist was devoutly offered, seated on the Pontifical throne in this Vatican hall, he ordered that he be approached.

[*Latin ed. p. 248*]

248 His, Cardinal Aloysius Masella, Prefect of the Sacred Congregation of Rites and Relator of the Cause, together with Reverend Father Augustine Caprara, Promoter of the Holy Faith, and myself, the undersigned Secretary, and those present, solemnly pronounced: That two proposed miracles are established; namely, the first, in which Joseph Rigliani, a child consumed by an acute and grievous disease of the abdomen, and already judged by those present for nine hours to be dead, was perfectly and immediately healed, after his mother, Venerable Bernardine, implored [his healing] at the Venerable Bernardine's shrine in Materna; and the second, which is reported as follows: Father Anthony Grassi, of the Society of Jesus, suffering from an old and incurable fistula in the rectum, which had resisted iron and fire, was immediately and perfectly healed, without any remaining scar, while ministering to the sacred relics of Saint Bernardine. Furthermore, this Decree was ordered to be published and recorded in the Acts of the Sacred Congregation of Rites, on the Ides of November, in the year 1894.

CAIETANUS CARD. ALOISI - MASELLA, Prefect of the Sacred Congregation of Rites.

L. * S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation of Rites.

EUGUBINA.

Decree of Beatification and Canonization of the Venerable Servant of God, Clare Isabella Gherzi, Abbess of the Order of Saint Clare in the Venerable Eugubine Monastery of the Most Holy Trinity.

ON THE QUESTION of whether it is established that the Venerable Servant of God possessed the Theological Virtues of Faith, Hope, and Charity in God and in her neighbor, as well as the Cardinal Virtues of Prudence, Justice, Temperance, and Fortitude, and their corresponding virtues, in a heroic degree, in the case and to the effect of which we are speaking?

The most wise plan of God, by which greater examples of virtue are brought forth in the Church in times of greater wickedness and errors, is evident in the case of Venerable Clare Isabella Gherzi, who lived in the 18th century, a time of immense crimes and countless errors.

[*Latin ed. p. 249*]

From the Sacred Rituals, number 249, it is not undeservedly held that she aroused the appearance of sanctity. For she, born in the suburb of Genoa, at Ponte Decimo, to pious parents, was remarkably inclined and capable of piety from her tender years, and the perpetual monuments tes-

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tify that, in the year of the restored salvation of 1758, on the very day of the solemnities dedicated to the most pure Mary, Holy Conception, she, having been bound to God with vows in the Eugubino monastery of the Most Holy Trinity, lived her life so rightly and completely that she was considered not so much a distinguished example of all virtues as almost a prodigy. And she, having received such praise, diligently performed her duties, so that, barely entering her thirty-third year, she was appointed abbess of the renowned Eugubino monastery, with the unanimous consent of the religious and with apostolic permission; and, although afflicted by a long illness from the beginning, and, although remedies proved ineffective, she remained confined to her bed for twenty-eight years, until she passed away, she persevered exceedingly and as an example. Indeed, being most closely united to Christ, and having received singular strength from Him, she brought forth those abundant fruits, that she chose to imitate in herself all those things which are characteristic of the lives of virtuous women, and she endeavored to refer them to her own way of living. And it came to pass that nothing was more pleasing to her than to cultivate the knowledge of the faith, a purity of morals almost equal to the brightness of the angels, self-denial, a watchful prudence even in difficult matters, and contempt for the world, not only to cherish, but even to delight in, so that the testimony given by the Apostle about her could rightly be proclaimed: "And the unmarried woman and the virgin thinketh on the things of the Lord: that she may be holy both in body and in spirit. But she that is married thinketh on the things of the world: how she may please her husband." Moreover, she especially added to this, that she might ardently love God alone, and that she might look to nothing but heaven, and that she might devote all her preces to prayers, so that, prolonging them late into the night, she might devote herself entirely to the contemplation of divine things, and that she might nourish the flames of chastity, and that she might increase them day by day with incessant prayers offered to the celestial saints, and especially to the most Blessed Virgin, whom she was accustomed to call Mother. Therefore, it is not surprising that, being afflicted and deeply worn by countless torments, she not only endured, with a brave and willing spirit, the most bitter and harsh things, but also discovered that she utterly detested her own praises, and that the cross was indeed the gift of God, which should be most eagerly sought after, and that she both embraced it and taught others. Hence, while the impieties of the eighteenth century raged, and increased day by day.

[*Latin ed. p. 250*]

250 Through the observance of the sacred rites in Dices, everything was conducive to the salvation of souls, and she, more by example than by exhortation, zealously encouraged others to devote themselves to religion, striving with all her might to increase their fervor. She constantly urged

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the nuns to strive for the heights of piety, to place the honor of God above all things, and to dedicate their lives to the discipline of the Gospel, surrendering themselves entirely to the divine will, and seeking nothing more than to diligently practice virtue, and, fostering the love of God both in themselves and in others, to kindle their hearts with a fervent desire for Christian perfection. — Having begun in this way, she never ceased, until a long illness brought her to the very brink of death, when, with great humility, she asked the nuns for their prayers; and when the end was near, on the appointed day, she peacefully departed this life, as if entrusting herself to the loving care of the great Mother of God, as if by a testament. And although all desired it and wept, she finally found rest in the sight of Christ, freed from the cares of the world, having lived for eighty-five years. Although the venerable servant of God, Isabel, had considered her life in Christ to be more heavenly than earthly, her reputation for holiness could not be suppressed. Indeed, her divine graces shone forth, spreading widely not only among her neighbors, but also beyond the borders of Italy, to other peoples of Europe; and she inspired great admiration in many high-ranking Church officials, Cardinals, and other men of outstanding virtue, who did not hesitate to compare Isabel to Saint Teresa and to call her blessed. For her heroic virtues, overflowing with heavenly gifts, were not only spread by word of mouth to foreign lands, but also by miracles, which, while she was still on earth and even after she had gone to heaven, were granted in response to the prayers of Clara Isabel, thus testifying to the will of God. Therefore, an investigation into her life and works was begun shortly after her death, and was easily concluded according to the established legal procedures, with all other requirements prescribed by the Apostolic constitutions and canonical regulations being fully observed and fulfilled. Thus, the Congregation of Sacred Rites proceeded to examine her virtues for the purpose of beatification. And this matter was discussed in three stages: first, on December 4th, 1882, in the halls of the Rmi Car-

[*Latin ed. p. 251*]

From the Sacred Rituals, 251: The canonical inquiry of Aloysius Oreglia, instituted by the Most Reverend Stephen, Bishop of Oporto and of St. Rufina, and the Relator, took place: the first in the palace at Vatican, on the Kalends of December in the year 1890; the second in a general assembly held there on the thirteenth day before the Kalends of July, in the same year, before the Most Blessed Father Leo XIII; in which the aforementioned Reverend Cardinal proposed the following question for discussion: Whether the virtues of Faith, Hope, and Charity in God and in neighbor, and also the Cardinal virtues of Prudence, Justice, Temperance, and Fortitude, and those things connected with them, were present in the Venerable Servant of God, Clara Isabella Gherzi, in a heroic degree, in the case and with regard to the effects under consideration? And all those present, the Reverend

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Cardinals and Consultor Fathers, individually gave their votes. The Most Holy Lord, after attentively hearing everything, although He gave hope with the testimony of His favorable vote, nevertheless postponed making His judgment known; and He admonished that, in a matter of such importance, the light of heavenly Wisdom, which He desired to be propitious in resolving the case, should be sought. Today, on this day which falls upon the feast of the illustrious Stanislaus Kostka, the angelic adolescent, having diligently performed the divine work in His sanctuary, He entered this hall of the Vatican building, and, seated upon the papal throne, He received Aloysius Oreglia, instituted by Saint Stephen, the Promoter of the Cause, and Aloysius Masella, Prefect of the Congregation of Sacred Rites, and the Reverend Father Augustine Caprara, Promoter of the Holy Faith, and myself, the undersigned Secretary; and, with these present, He solemnly declared: That the virtues of Faith, Hope, and Charity in God and in neighbor, and also the Cardinal virtues of Prudence, Justice, Temperance, and Fortitude, and those things connected with them, were present in the Venerable Servant of God, Clara Isabella Gherzi, in a heroic degree, in the case and with regard to the effects under consideration. He ordered that this decree be made public and be recorded in the acts of the Congregation of Sacred Rites on the Kalends of November in the year 1894.

CAL CARD. ALOISI-MASELLA, Prefect of the Sacred Rites Congregation.

ALOISIUS, Secretary.

L. >£ S. TRIPEPI

[*Latin ed. p. 252*]

252 FROM THE SACRED CONGREGATION: Additions to be made to the feasts of St. John of God and St. Camillus de Lellis. March 8th. — On the feast of St. John of God, Confessor. ADDITION TO THE SIXTH READING. After the words "he brought them into the number of the saints," add: "and Leo XIII, at the request of the bishops of the Catholic world and after consultation with the Congregation of Rites, declared him the heavenly patron of all hospitals and of all the sick everywhere, and ordered that his name be invoked in the litanies of the suffering." ADDITION TO BE INSERTED INTO THE ROMAN MARTYROLOGY. (March 8th) On the eighth day before the Ides of March, in Granada, in Hispania, St. John of God, founder of the Order of the Brothers of Charity, renowned for his mercy towards the poor and his contempt for earthly things: whom Leo XIII, the Supreme Pontiff, declared the heavenly patron of all hospitals and of the sick. Furthermore, in order that heavenly assistance may be multiplied, while even now war is being waged against us by the most bitter enemies of the Christian religion, in hospitals, where ecclesiastical author-

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ity has already been undermined and almost all spiritual consolation has been lost; the Most Reverend Father John Maria Alfieri, General Prior of the Order of St. John of God, followed by many of his Fathers, both Religious and Roman bishops, obtained that St. John of God, truly outstanding for his mercy towards the poor and the sick, should be declared and instituted as the heavenly patron of all hospitals, together with St. Camillus de Lellis. Recently, wishing to satisfy the pious desires of the Brothers of his Order, and to increase the honor and glory of his parent in the world, the Most Reverend Father Cassian Maria Gasser, the present General Prior of the aforementioned Order, repeatedly implored the Most Holy Lord Leo XIII, Pope, that he would deign to grant that such a hero of charity should be suitably honored with the title of patron, both in the Office and in the Martyrology. Therefore, the respective additions have been made to both the sixth reading and the Roman Martyrology.

[*Latin ed. p. 253*]

From the Sacred Rites, number 253, concerning the insertion of [something], presented by the Most Reverend Cardinal Lucido Maria Parocchi, Bishop of Albano Laziale, Relator, to the Ordinary Assemblies of the Congregation for Sacred Rites, held at the Vatican, so that they might be approved; the Most Reverend and Most Illustrious Fathers, Prefects entrusted with the preservation of the Sacred Rites, having heard the Reverend Father D. Augustine Caprara, Promoter of the Faith, judged it fitting to write as follows: For the information and consideration of the Most Reverend Pope, and the Promoter of the Faith. On the tenth day of July, in the year 1894. After a review of these additions, carried out by the same Most Reverend and Most Illustrious Cardinal, together with the same Promoter of the Faith, and after a report made by the undersigned Cardinal, Prefect of the Congregation for Sacred Rites, to the Most Holy Lord Pope Leo XIII concerning all of these matters, His Holiness, considering the judgment of the same Sacred Congregation to be valid, ordered that such additions be inserted, as indicated in the preceding Decree, both in the Breviary and in the Roman Martyrology. On the twenty-third day of the same month and year. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Rites, L. & S. ALOISIUS TRIPEPI, Secretary of the Sacred Rites. On the eighteenth day of July. – On the feast of Saint Camillus de Lellis, Confessor. ADDITION TO CHAPTER VI, OF THE LECTIONARY. After the words: "added to the calendar of the saints," add: "and Leo XIII, by the unanimous vote of the Supreme Pastors of the Catholic world, and after consultation with the Congregation for Sacred Rites, declared him the heavenly Patron of all hospitals and the sick everywhere, and ordered that his name be invoked in the litanies of the dying." ADDITION TO BE INSERTED IN THE ROMAN MARTYROLOGY. (July 18) On the fifteenth day before the Kalends of August... "of Saint Camillus de Lellis, Confessor, Founder of the Order of

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Clerics Regular, ministers to the sick, whose birthday is celebrated on the day before the Ides of July: whom Leo XIII, the Supreme Pontiff, declared to be the heavenly Patron of hospitals and the sick."

[*Latin ed. p. 254*]

FROM THE SACRED RITUALS OF THE ENTIRE WORLD. By Apostolic Letters in the form of a Brief, dated June 22, 1886, the most blessed Camillus de Lellis, renowned hero of Christian charity, was declared and established, together with Saint John of God, as the heavenly Patron of all hospitals and of all the sick everywhere, at the request of numerous Cardinals and sacred dignitaries. To which, that greater honor may be added to the Parent and Founder, and that his name and glory may be more widely spread; the Reverend Father John Mattis, Prefect General of the Congregation of Regular Clerics serving the Infirm, having taken the common sentiments of his brethren, repeatedly implored the Most Holy Lord Pope XIII, that the same Saint Camillus might be venerated throughout the world with the most pleasing title of Patron of all Hospitals and of the Sick, both in the Divine Office and in the recitation of the Martyrology, on the eighteenth day of July. Therefore, since the respective additions were to be inserted both in the sixth Lection and in the Roman Martyrology, and were signed in the Ordinary Assemblies of the Congregation of Sacred Rites at the Vatican by the Most Reverend Cardinal Lucido Maria Parocchi, Bishop of Albano Laziale, as Relator, in order that they might be approved; the Most Reverend and Reverend Fathers presiding over the Sacred Rites, having heard the Reverend Father D. Augustine Caprara, Promoter of the Faith, decided to write thus: for the sake of grace and to the Most Reverend Promoter of the Faith. On July 10, 1894. And therefore, after the revision of those same additions by the same Most Reverend and Reverend Cardinal, together with the same Promoter of the Faith, and after I, the undersigned Cardinal, Prefect of the Congregation of Sacred Rites, had made a report to His Holiness Pope Leo XIII on all these matters, His Holiness, considering the judgment of the same Sacred Congregation to be valid, ordered that such additions be inserted, as decreed in the preceding document, both in the Breviary and in the Roman Martyrology. On the 23rd day of the same month and year.

C. CARD. ALOISI - MASELLA, Prefect of the Sacred Congregation of Rites.

L. S. ALOISIUS TRIPEPI, Secretary.

[*Latin ed. p. 255*]

FROM THE SACRED CONGREGATION OF RITES, DECREE 255: Rome or Milan, concerning the beatification and canonization of the venerable Servant of God, Glycerius Lanariani, a novice of the Order of Regular Clerics, Poor Servants of the Mother of God, and of the pious schools of the

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Mother of God.

Since, at the request of the Most Reverend Father Philip Rolletta, Priest, Professed of the Congregation of Regular Clerics, Poor Servants of the Mother of God, and Postulator of the Cause of the Venerable Servant of God, Glycerius Lanariani, a novice of the same Congregation, the Most Holy Pope Leo XIII had already graciously permitted that, concerning the fame of sanctity of life, virtues, and miracles in general, pertaining to the aforementioned Venerable Servant of God, proceedings be held in the Ordinary Session of the Sacred Congregation of Rites without the intervention and vote of Consultors, and since the aforementioned Cause was presented by the Most Eminent and Most Reverend Cardinal Angelo Bianchi, the following question was proposed to the Ordinary Sessions of the same Sacred Congregation, which were held on the designated day at the Vatican: Namely: Does it pertain to the validity and relevance of the process constructed by Apostolic Authority in the City, concerning the fame of sanctity of life, virtues, and miracles in general, pertaining to the aforementioned Venerable Servant of God, in the case and for the purpose of which it is treated?

Furthermore, the Most Eminent and Most Reverend Fathers, Prefects of the Sacred Congregation for the Propagation of the Faith, having duly considered all matters, and having heard the voice and written opinion of the Reverend Father Augustine Caprara, Promoter of the Holy Faith, judged it fitting to respond: Affirmative, that is, it pertains. On the 14th of August, 1894.

Subsequently, a report on these matters was made to the Most Holy Pope Leo XIII by myself, the undersigned Cardinal, Prefect of the Sacred Congregation of Rites, and His Holiness approved and confirmed the judgment of the aforementioned Sacred Council. On the 24th of the same month and year.

CARD. ALOISIUS - MASELLAS. Prefect of the Sacred Congregation.

L. S. ALOISIUS TRIPEPI, Secretary.

FROM THE SACRED CONGREGATION OF THE INDEX, Friday, the 1st of September, 1894.

The Sacred Congregation of Eminent and Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Pope Leo XIII and the Holy Apostolic See, for the purging of books of false doctrine, and for their proscription.

[*Latin ed. p. 256*]

256 FROM THE SUPREME SACRED CONGREGATION, by its authority and with the approval of the Supreme Pontiff, given in the Apostolic Palace at the Vatican on September 19, 1894, the following works are condemned and condemned, are proscribed and proscribed, or are ordered to

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be included in the Index of Prohibited Books, and are hereby included:

* Mirzan Abbé Octave - Priest of the Basilica of Saint John the Evangelist of Smyrna. — Life of Saint Polycarp. — The Angel of the Church of Smyrna, and the Fifth Apostle of Gaul. — Poitiers, Imprimerie Blaiá, Roy et C., 7, Rue Victor-Ugo 7, 1893.

* Zola Emile. — The Three Cities - Lourdes - Eighth edition. Paris; Bibliothèque Charpentier. — G. Charpentier and E. Fasquelle, publishers, 11, Rue de Grenelle, 11, 1894.

* Frigeri Antonio. — The Project of Minister Bonacci. Open Letter to the Honorable Senators and Deputies. — Palermo, Giovanni Villa, Publisher, 1894. — Condemned. — Decree of the Sacred Congregation of the Holy Office, August 16, 1894.

* The author of the work entitled - Beyond the Grave, philosophical-theological fragments on the mysteries of the afterlife - by the Abbé L. Ant. Pieraccini, priest in the diocese of Ajaccio - Prohibited. Decree of June 8, 1894 - He willingly submitted and disapproved of the work.

* The author of the work entitled - Summary of the System of Renovation - by the Reverend Canon E. A. Chabauty in Mrabeau-du-Poitou (Vienne) — Prohibited. Decree of June 8, 1894 - He willingly submitted and disapproved of the work.

Therefore, no person of any rank or condition whatsoever may dare to publish, print, read, or retain the aforementioned works, in any place or language, but must deliver them to the Ordinary of the place, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books.

These matters, having been reported to OUR MOST HOLY FATHER LEO XIII by me, the undersigned, SECRETARY, HIS HOLINESS approved the Decree and ordered it to be promulgated. In witness whereof, etc.

Given in Rome on September 19, 1894.

F SERAPHINUS, BISHOP OF TUSCULANUS.

CARD. VANNUTELLI, PREFECT.

FR. MARCOLINUS CICOGNANI, PROCURATOR GENERALIS.

Office of Secrets.

Place and Seal.

September 21, 1894: I, Vincent Benaglia, Magister Cursorum, testify that the aforementioned Decree was affixed and published in the City.

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Vincentius Benaglia, Magister Cursorum.

[*Latin ed. p. 257*]

257 APOSTOLIC LETTERS: By the divine Providence of Our Most Holy Lord Pope XIII, concerning the preservation and protection of the Eastern rites. The dignity of the Eastern Churches, commended by the venerable monuments of antiquity and their own distinctive characteristics, holds great veneration and glory throughout the entire Christian world. For in them, at the beginning, under the most benign counsel of God, the first beginnings of human redemption were initiated, and they quickly progressed to true growth, so that the praises of the apostolate and martyrdom, of doctrine and sanctity, might flourish with the greatest honor, and bring forth the joy of the most salutary fruits. Moreover, from them, the power of countless benefits has wonderfully flowed forth to other distant peoples; for when blessed Peter, the prince of the apostolic order, sought to dispel the manifold errors and corruptions, he brought the light of divine truth, the Gospel of peace, and the liberty of Christ to the city of the Roman Empire, by heavenly inspiration. — But the Roman Church, above all others, which is the head of all churches, has always shown, from the time of the apostles, the honor and charity it has bestowed upon the Eastern Churches, and has rejoiced in their faithful obedience; and through various and harsh times, it has never abandoned them, but has striven to raise them up, to restrain those who are bound, and to restore those who are discordant, through providence and benefits. Nor was it the last duty of vigilance to preserve and protect, within each Eastern nation, the customs and rites which they had established, as far as their power and wisdom allowed, and which were deemed legitimate; and there are many examples of this, which Our Predecessors, among them the blessed Pope Pius IX, have prudently considered, either through their own actions or through the Sacred Council, for the propagation of the Christian name. — Moved and drawn by no less zeal, We have, from the very beginning of Our pontificate, turned Our attention to the Christian nations of the East. We have indeed hastened to provide for their pressing needs, and We have subsequently found other opportunities to demonstrate Our active benevolence; but nothing is, or ever will be, more ancient or more sacred, than to bind hearts to the Apostolic See, and to kindle in them such zeal and fruitfulness of faith, that they may strive to emulate the excellence and glory of their ancestors through renewed examples. Already, We have been able to offer some assistance to those Churches. — The College of Armenian and Maronite clerics established here in this city.

[*Latin ed. p. 258*]

258 We have established Apostolic Letters for the protection of [certain areas], as well as for Philippopolis and Hadrianopolis, concerning the Bul-

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garians; we have decreed the founding of a Leonine institution at Athens; and we are also greatly promoting the seminary of Saint Anne, which has been begun in Jerusalem for the education of Greek Melkite clergy. Furthermore, we are striving to increase the number of Syrians among the students of the Urbanian College; and we are restoring the Athanasian institution for the Greeks to its former state, which was wisely desired by Gregory XIII, a most generous patron, from which most illustrious men have emerged. We ardently desire and hope to be able to experiment and accomplish even more in this and similar matters, now that, with God's help, we have completed a long-considered plan to call upon all princes and peoples through a special letter to achieve the blessed unity of the divine faith. Indeed, among the Christian peoples sadly divided, we strive, as much as we can, with apostolic and paternal charity, to call upon, exhort, and implore, first of all, those of the East. It is pleasing to us to see the hope that has been begun daily grow stronger, and it is certain that this most salutary work will continue to flourish; so that, as much as can be expected from the Providence of the Apostolic See, we may fully accomplish it, by removing the causes of discord or suspicion, and by employing the best possible means of reconciliation. We consider this to be of the greatest importance for the well-being of the discipline of the Easterns, to which we have always devoted our care and attention. In this matter, we have already given, and will continue to give, the following instruction to the young clerics of those nations, when new institutions are founded, that they may observe and revere their own rites with the utmost devotion, and that they may learn and practice them diligently. For there is more involved in the preservation of Eastern rites than can be believed. For Augusta, in which so many different forms of rites are ennobled, is ancient, and is a most glorious ornament of the Church, and affirms the divine unity of the Catholic faith. Moreover, from this, it is evident that the Eastern Churches, as they testify to their apostolic origin, also show their close connection with Rome from the very beginning. And perhaps nothing is more admirable for illustrating the mark of Catholicism in the Church of God than the unique obedience that diverse forms of noble ceremonies and the venerable language of antiquity offer, a nobility derived from the customs of the Apostles and the Fathers; almost as a reflection of the most excellent obedience that was shown to Christ, the divine Author of the Church, when the Magi, brought from various parts of the East, came to adore Him...

[*Latin ed. p. 259*]

LETTERS APOTOLIC 259 to him (1). — It is fitting to observe that, although the sacred rites, even though not instituted in themselves to prove the truth of the Catholic dogmas, nevertheless vividly express and splendidly declare it. Therefore, the true Church of Christ, as it greatly strives to preserve inviolate those things which it has received as divine and im-

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mutable, sometimes allows for some novelty in the use of their forms, especially those that are in harmony with venerable antiquity. In this way also, the power of its life, which never grows old, is revealed, and the Church itself excels as the magnificent bride of Christ, as the wisdom of the holy Fathers recognized in the Davidic utterance: "The daughters of kings have delighted thee in thy glory. The queen stood on thy right hand, in gilded clothing; surrounded with variety" (2). Therefore, since this variety, which is approved by the law of Eastern liturgical discipline, besides other praises, is converted into such honor and utility for the Church, it is necessary that the parts of Our ministry pertain to it, so that, rightly, it may be consulted, lest anything inconvenient be imprudently introduced by Western ministers of the Gospel, whom the charity of Christ urges to those lands. — Indeed, those things which Our illustrious predecessor, Benedict XIV, wisely and prudently decreed through the Constitution *Demandatam*, in the form of a letter, dated December 24, 1743, to the Patriarch of Antioch of the Greek Melchite rite and to all Bishops of the same rite subject to that Patriarch, remain in force. However, with the passage of time, and with the new conditions of things in those regions, and with the multiplication of Latin missionaries and institutions there, it has come to pass that certain special concerns of the Apostolic See have arisen in this matter: which, certainly, we have learned to be most opportune through these years, and the most equitable desires of the Venerable Brothers, the Patriarchs in the East, have been confirmed to Us, not once, but repeatedly. In order that the whole matter might be more clearly apparent, and that more suitable provisions might be defined, We deemed it fitting to summon those same Patriarchs to the City not long ago, with whom We deliberated. Then, together with some of Our beloved sons, Cardinals of the Holy Roman Church, We had a frequent assembly for deliberation. — Regarding all these matters, (1) Matthew, chapter 12. (2) Psalm 44.

[*Latin ed. p. 260*]

260 The APOSTOLIC LETTERS, which have been commonly proposed and discussed, having been carefully considered, we have, with the authority of the same Benedictine Constitution, sought to make them more explicit and more comprehensive, in accordance with the new circumstances of those nations. In doing so, we have taken as our starting point the principle that Latin priests are to be sent to those regions only with the counsel of the Apostolic See, to be of assistance and support to the Patriarchs and Bishops; therefore, we caution against using the faculties granted to them in such a way as to prejudice the jurisdiction of those bishops or diminish the number of their subjects (1): from which it is clear by what laws the offices of these Latin priests are to be regulated in relation to the Eastern hierarchy. Therefore, the following matters, having been considered in the Lord, are prescribed and established, as we do with the authority granted

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to us by the Apostolic See; and we declare now that we desire and decree that the same Benedictine decrees, which were originally given concerning the Melchite Greeks, should apply to all the faithful of whatever rite in the East.

I. Any Latin missionary, whether from the secular or regular clergy, who, with the intention of converting an Eastern individual to the Latin rite, incurs the suspension from divine offices that the very act entails, and who is subject to the other penalties prescribed in the aforementioned Constitution, shall be deprived of his office and excluded therefrom. To ensure that this provision remains certain and firm, we command that a copy of it be made public and displayed in the churches of the Latins.

II. Where there is no priest of the proper rite to whom the Eastern Patriarch can entrust the spiritual care of his people, the care of those people shall be undertaken by a parish priest of a different rite, who shall use the same species, whether leavened or unleavened, for the consecration; those who use them according to the Eastern rite are to be preferred. – However, the faithful shall have the faculty of receiving communion in either rite, not only in those places where there is no church or priest of their own rite, as was decreed by the Sacred Council for the propagation of the Christian name on August 18, 1893, but also where, because of the distance of their church, they cannot attend it without great inconvenience: concerning which, the Ordinary shall judge. This shall remain fixed: he who has communicated in a different rite, either for a long time, shall not, for that reason, be considered to have changed his rite, but shall persevere in all other offices in his own parish priest.

(1) Const. Demandatam, n. 13.

[*Latin ed. p. 261*]

LETTERS APOSTOLIC 261 III. Societies of religious men dedicated to the instruction of youth in the East, if within any college there are a considerable number of students of the Eastern rite, shall have a priest of the same rite, with the consultation of the Patriarch, present among them for the benefit of the students, to celebrate the sacrifice of the Mass, to administer the Sacraments, to impart catechesis in the vernacular language, and to explain the rites; or at least, on Sundays and other obligatory feast days, they shall invite such a priest to perform these offices. For this reason, We decree that these same Societies shall grant all privileges, even those worthy of special mention, to students of the Eastern rite, as long as they follow the Latin rite while residing in their colleges; and We command that all things be done in accordance with this. Regarding observances and fasts, the moderators shall see to them with religious equity. — Furthermore, provision shall be made for external students: those who ought to be sent or led to their own churches or parishes, unless it appears that they can participate in the offices of the same rite with the internal students. IV. The same prescrip-

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tions shall be transferred, as far as possible, to Societies of religious women dedicated to the education of girls in monasteries and schools. But if any change should occur through circumstances and opportune events, it shall not be made before the consent of the Patriarch has been obtained and the permission of the Apostolic See. V. No new colleges or houses of religious men or women of either sex, using the Latin rite, shall be opened in the future, unless requested from and with the consent of the Apostolic See. VI. To priests, both Latin and Eastern, it is not permitted, either in their own rites or in those of others, to absolve anyone from sins which are reserved to their respective Ordinaries, unless they have been granted permission by the same; in this matter, We revoke any and all privileges, even those worthy of special mention. VII. To Eastern Christians who have adopted the Latin rite, even if by a pontifical decree, it will be permissible to return to their former rite, after having requested it from the Apostolic See. VIII. A woman of the Latin rite who marries a man of the Eastern rite, as well as a woman of the Eastern rite who marries a man of the Latin rite, shall have the right to pass over to the rite of her husband, both during the marriage and after its commencement; but after the marriage is dissolved, she shall be free to resume her own rite. IX. Whoever is an Eastern Christian, residing outside the patriarchal territory, shall remain attached to his own rite, even though he is under the administration of Latin clergy; so that, for no reason, either through length of time or otherwise, he shall be transferred to the Latin rite.

[*Latin ed. p. 262*]

262. Apostolic Letters: Should any case arise that requires intervention, it shall fall under the jurisdiction of the Patriarch, as soon as his authority extends to that territory.

X. No member of any religious order or institute of either sex of the Latin rite shall be permitted to receive into their ranks any Eastern individual who has not previously presented the testimonial letters from his own Ordinary.

XI. If any community, family, or individual, having separated from the unity of the Catholic Church, should return to that unity under the condition of being received into the Latin rite, then that individual shall remain temporarily bound to this rite; however, it shall be within his power to return to his native Catholic rite at a later time. If, however, no such condition is imposed, but rather a community, family, or individual is administered by Latin priests simply because Eastern priests are lacking, then they shall return to their own rite as soon as an Eastern priest is available.

XII. All matrimonial and ecclesiastical causes, whatever they may be, concerning which an appeal is made to the Apostolic See, shall not be decided by Apostolic Delegates, unless explicitly ordered to do so, but shall be referred entirely to the Sacred Council for the propagation of the Christian

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faith.

XIII. We grant jurisdiction to the Greek Melchite Patriarch over all the faithful of the same rite who are within the boundaries of the Turkish Empire.

Besides these particular provisions and those prescribed by law, We are most concerned, as We have already mentioned, that seminaries, colleges, institutions of every kind be established in suitable locations in the East, and that these be entirely dedicated to the formation of young people of the local rite, for their own benefit. This purpose, in which We see a great hope for the advancement of religion, We have determined to promote with generous support, relying, as We trust, on the aid of Catholics. We have shown, in our encyclical letters issued last year concerning the establishment of clerical colleges in the Orient, that the service of indigenous priests will be far more fruitful, more economical, and more readily accepted than that of foreign priests. Thus, with a view to the once-again considered institution of the sacred youth, the study of theology and of the Scriptures will surely increase in honor among the Easterners; the knowledge of ancient languages will flourish as much as the skill in modern languages; the wealth of doctrine and literature, with which their fathers and writers abound, will be brought to the common good.

[*Latin ed. p. 263*]

APOSTOLIC LETTERS will greatly benefit: namely, that with the Catholic priesthood emerging, its doctrine shining forth and its example of integrity praised, those brothers who are separated will more readily seek the embrace of that same Mother Church. Then, indeed, if the orders of the clergy truly associate minds, studies, and actions with fraternal charity, certainly, with God's favor and guidance, the most auspicious day will arrive, when, with all things united in the faith and knowledge of the Son of God, the entire body will be fully and perfectly compacted, and connected through every bond of service, so that it may make the body grow in edification in charity (1). For only then can Christ's true Church rightly boast, in which one body and one spirit perfectly cohere (2). All of these things, both individually and collectively, which We have decreed, leave no doubt that the Venerable Brothers, Patriarchs, Archbishops, and Bishops of whatever Eastern rite, for the sake of the honor they render both to the Apostolic See and to Us, and for the care of their Churches, will receive them with all reverence and obedience, and will diligently strive to ensure that their observance is fully achieved by those concerned. Moreover, the fruits that can be anticipated and rightly hoped for from this will greatly result from the work of those who carry out Our mandate throughout the Christian East. Therefore, We commend to Our Apostolic Delegates that they truly honor the institutions and traditions handed down to those nations by their ancestors: that they show due respect for

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the authority of the Patriarchs, and take care to cultivate it; and that, in all dealings with them, they fulfill the counsel of the Apostles: "Preceding one another in honor" (3). They should demonstrate a studious and benevolent spirit to the Bishops, clergy, and people; and they should clearly reflect in themselves that same spirit with which the Apostle John acted when he gave the Apocalypse to the seven churches in Asia, with the inscription: "Grace to you and peace from him who is, and who was, and who is to come" (4): and in all their actions, they should strive to be those who are truly worthy messengers and reconcilers of the holy unity between the Eastern Churches and the Roman Church, which is the center of that same unity and charity.

(1) Ephesians 4:13, 16.

(2) Ibid, 4.

(3) Romans 12:10.

(4) Revelation 1:4.

[*Latin ed. p. 264*]

264 APOSTOLIC LETTERS: Let those who receive them act accordingly, let them be encouraged! By Our command, Latin priests, as many as diligently labor in those regions for the eternal salvation of souls: if they labor piously in obedience to the Roman Pontiff, then truly God will grant abundant increases. Therefore, whatever We determine, declare, and establish in these letters, We will that it be inviolably observed and commanded by all to whom it pertains, and that it cannot be noted, brought into controversy, or violated, by any means, even for a privileged reason, under any pretext or name; but that it shall have its full and complete effect, notwithstanding any Apostolic decrees, even those issued in general or provincial councils, constitutions, or any statutes, customs, or prescriptions, confirmed by Apostolic authority or any other means; to all of which, as if they were inserted verbatim in these letters, We expressly derogate and intend to have derogated, and to all others who may act to the contrary. — We wish that the same faith be given to copies of these Letters, even those printed, and signed by the hand of the Notary, and sealed with the seal of Our appointed official in ecclesiastical dignity, as would be given to the present Letters themselves. Given at Rome, near St. Peter, in the year of the Incarnation of Our Lord one thousand eight hundred and ninety-four, on the eve of the Kalends of December, in the seventeenth year of Our Pontificate.

A. CARD. BIANCHI, Pro-Datary.

C. CARD. DE RUGGIERO, Seen by the Curia.

I. DE AQUILA, and Vice-Comites, at the Place of Lead.

Reg. in Secret. Brevium.

I. CUGNONI.

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[*Latin ed. p. 265*]

265 Letters from His Holiness Pope Leo XIII to Cardinal Oreglia, patron of the Pontifical Institute dedicated to the study of Antiquities, founded by Pope Urban. It is with sorrow that all wise men feel, and with a desire not insignificant to Ourselves, that within a short interval of time, we have witnessed the unexpected death of distinguished men, whose renown had spread throughout the nations. These were Hilarius Alibrandi, Charles Louis Visconti, and John Baptist De Rossi, who have rendered most excellent service in the field of archaeology. With the loss of these men, as we lament the extinction of a noble ornament of the Roman City, we also fear lest the studies of antiquities suffer some detriment. Indeed, from the very beginning of Our Pontificate, We have devoted a considerable portion of Our efforts to fostering the study of the best disciplines, as it has always been the solemn duty of Our predecessors. Although We have considered it of the utmost importance to favor those branches of knowledge which add light and strength to Religion; nevertheless, We have not neglected those others which, in every way, adorn the mind and contribute to the honor of human society. In particular, We have always held in high regard those disciplines which are concerned with the investigation and elucidation of antiquities. For through these, the deeds of past times and of ancient men are brought to life as it were, and presented before our very eyes; and it is especially evident how much these have contributed to the ordering of the history of Christianity and to the defense of the dogmas of the Church against the calumnies of the wicked. For this reason, We have always shown a particular benevolence towards the learned society of Siena, dedicated to the promotion of studies in antiquities, and We have spared nothing to ensure that its former glory be maintained, and that it flourish daily with greater amplitude and dignity. Therefore, impelled by a great desire that this institute may not lose any of its former splendor, but rather receive ever greater advancements; and as a testimony of Our favorable sentiments towards it, We decree that two gold medals and two silver medals shall be awarded annually to deserving scholars. These shall be given according to the following rule: the gold medals shall be awarded to those, whether from Our own ranks or from outside, who, through their work, have distinguished themselves as first in the field; the silver medals, however, shall be awarded to those...

[*Latin ed. p. 266*]

266 Letters are awarded to those who, during the year, have excelled in their diligence and learning in discussing matters of archaeology. We are confident that, through this initiative of Our Providence, the Society of Archaeologists will have ample opportunity to demonstrate the fruits of their endeavors. Meanwhile, to you, Venerable Brother, who serves the Urban College under the patronage of the best of Patrons, and to the Col-

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lege itself, we impart our apostolic blessing in the Lord. Given at Rome, near St. Peter's, on the 4th of December, 1894, in the seventeenth year of Our Pontificate. FROM THE HOLY CONGREGATION FOR THE COUNCIL OF MILAN. REGARDING PAROCHIAL RIGHTS. On April 14, 1894. Council of Trent, Session 24, Chapter 13, Concerning Reforms. In the town of Busto Arsizio, in the Archdiocese of Milan, there existed, before the year 1343, an ancient and unique parish church of St. John the Baptist, in which only one priest served as the parish priest, responsible for the care of souls. However, within the boundaries of this parish church, there was a chapel or oratory of St. Michael. Due to the very large increase in the number of the faithful, a coadjutor benefice was established in this church in the year 1343, with the consent of the rector of St. John's, preserving the same rights and obligations as the actual care of souls, and with the coadjutor being obligated to offer certain signs of service to the parish priest, in order to demonstrate his dependence in the care of souls. For the same reason and for the same purpose, a second coadjutor was added to the church of St. Michael, through an instrument of establishment dated January 19, 1512, in which instrument mention is made of the lost foundation records of the prior. SUMMARY OF THE FACTS.

[*Latin ed. p. 267*]

IN MILAN. On the 26th of July, in the year 1583, Saint Charles Borromeo, who, through frequent and diligent visits to his Archdiocese, had observed that the priests entrusted with the care of souls in the town of Busto Arsizio were inadequate to their duties due to the ever-increasing population, transferred them to the collegiate church of Saint John the Baptist, located in Olgiate Olona, which was dedicated to Saint Stephen. In this place, on the contrary, the clergy was more than sufficient to meet the needs of the sacred ministry. To ensure that the transfer would not cause the collegiate church to lose its name and rights, the parochial right of the church of Saint John, which had previously belonged to the Rector, was united with the prebendal dignity. Two coadjutors were then established in the aforementioned church of Saint John, with the title and designation of "coadjutor canons," with the duty of assisting the parish priest in the care of souls. However, disagreements soon arose and gradually intensified between the coadjutors of Saint Michael and the coadjutor canons of Saint John the Baptist, the latter having arrived later and already surpassing the former in their canonical status. Therefore, the most wise and vigilant Archbishop, Cardinal Frederick Borromeo, under Pope Urban VIII, in the year 1624, also granted the coadjutors of the church of Saint Michael the title of canon, uniting them with the two existing canonical prebends in the church of Saint John. However, the coadjutor canons of Saint Michael, residing in a separate church, were of the opinion that they, just as much as the prebend of Saint John, were entitled to the title of parish priest, in order to assist

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in the care of souls in the town of Busto Arsizio, along with the parish priest and the coadjutor canons of Saint John the Baptist. As this conviction grew stronger among the coadjutors of Saint Michael day by day, and the parish priest of Saint John did not cease to oppose it, the matter was finally brought before the Milanese court in the year 1732, and a judgment was issued upholding the exclusive right of the parish priest of Saint John to the title and rights of the parish. This judgment, which became final, did not, however, extinguish the internal discord, which, at times, would flare up again under one guise or another, given any opportunity.

[*Latin ed. p. 268*]

268 MILAN. The matter proceeds. Indeed, even today, a question is being debated among the canons of Saint Michael and the parish priest of Saint John in the town of Busto Arsizio, concerning the right of viciniality, which the canons of Saint Michael claim as their due, especially by customary law. The right of viciniality, established by the synodal constitutions of the Archdiocese of Milan, determines which parish priest is to assume care of souls in the church of a neighboring parish when the parish priest of that church is absent or deceased. The occasion for the present controversy arose from the death of the parish priest of Sacconago, which occurred in January of the year 1889. After the death of the parish priest of that church, the Reverend Father Pius Chieppi, one of the canons of Saint Michael arrogated to himself, by right of viciniality, the spiritual care of the parish church of Sacconago, since the church of Saint Michael is closer to the church of Saint John the Baptist, which is the parish church of Sacconago. This was opposed by the parish priest of Saint John, the Reverend Father Joseph Tettamanti; and since the matter could not be resolved amicably, the court of Milan, on May 27th of the year 1890, issued a judgment in which it declared that the right of viciniality in this case belongs to the canons of Saint Michael, with precedence given to the senior canon among the two. The parish priest appealed this judgment to the Sacred Congregation. A Synopsis of the Arguments. DEFENSE OF THE CANON. Dividing his argument into four points, in 1 and 2 he maintains that the right of viciniality legitimately belongs to him by custom, as prescribed; in 3, he even claims that this right is inherent in the very nature of his benefice; and finally, in 4, he refutes certain objections raised by his opponent. Beginning with the exercise of spiritual care carried out by the canons of Saint Michael in the parish of Sacconago by virtue of the right of viciniality, he laments that the archives of that parish were destroyed by fire, leaving him with fewer documents; but, he says, these documents are of undeniable value. In the year 1645, Anthony Crespi, who was exempt from worldly affairs, was the parish priest of the church of Sacconago; John Carnago, a canon of Saint

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Michael,

[*Latin ed. p. 269*]

In Milan, number 269, two baptisms were administered by the curate of the parish of Sacconago, according to his office. The author notes that immediately after this annotation in the baptismal register, there follows a verification (*il visto*) signed by the Archdiocesan visitor and by the parish priest himself, Busti Arsitii. In the year 1688, when the curate of the parish of Sacconago was absent during the Paschal season, the sacraments were entrusted to the curate of St. Michael, to be administered in his name; but since the latter, being occupied with the cares of his own church, could not fulfill this, he appealed to the Ordinary, who delegated another priest. And here, on the occasion of the first baptism recorded in the designated book, he wrote: that he had administered this by order of the Archbishop, and that the vice-curate of St. Michael, Busti Arsitii, could not carry it out. In the same book, there is a verification signed by the parish priest Busti Arsitii in the year 1708. In the parish of Sacconago, with its widowed pastor, it is noted that the curate of St. Michael, having, by right, administered a single baptism as a vice-curate during a period of vacancy, and that this administration was subsequently ratified by the parish priest Busti Arsitii, according to custom, by his signature. However, the Reverend Chieppi states that he could not provide any information regarding other acts, nor concerning the funeral service itself, which was performed for the deceased parish priest, because the book pertaining to the dead was consumed by fire during that period. In the year 1780, the parish priest Canavesi died in the territory of Sacconago, and it is said that the clerical assembly of Marchesi, the curate of St. Michael, performed the funeral rites with such pomp and display of authority that he clearly demonstrated his right of vicinage. For the esteemed priest arranged everything for the funeral association and invited the parish priest of Rossi, Busti Arsitii, to celebrate the funeral Mass. And the aforementioned parish priest ratified all of this, signing the books of the parish of Sacconago and the church of St. Michael, in which is contained a detailed description of the funeral that had been performed. Furthermore, it is stated that the aforementioned assembly was so offended by the parish priest of Rossi's infringement of the rights of the curate of St. Michael that, in the year 1817, amidst the popular disturbances that arose at that time, he stole the books of the curacy of St. Michael and took them to his own church! From the year 1708 to 1889, a significant period of legal dispute is recorded.

[*Latin ed. p. 270*]

270 MILAN. Concerning the disputed right of proximity of the coadjutors of Saint Michael, because the parish priests of the place Sacconago, anticipating their own death, renounced their parochial

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benefice, until the parish priest Carera died in the year 1889. Hence arose the occasion for the dispute in question. In the second section, the Reverend Chieppi presents witnesses claiming this right of proximity, and 1) states that the entire population and clergy of the place Sacconago, upon the death of the parish priest, proclaimed the coadjutors of Saint Michael as the nearest. 2) He cites the coadjutors of the parish of Sacconago as witnesses, testifying that the deceased parish priest had often affirmed this right of the coadjutors of Saint Michael. 3) Furthermore, he presents neighboring parish priests of the parish of Sacconago in favor of his own claim, namely, the parish priest of the territory of Borsano and the coadjutor of Saint Michael. He insists on the testimony of the parish priest of Borsano, who, when summoned before the court, declared that the immediate predecessor, the prelate Bartholomew Piazza of the town of Busto Arsizio, had, on the occasion of the infirmities suffered by the deceased parish priest Carera, declared that the coadjutor of Saint Michael was the nearest parish priest to the parish of Sacconago. In the third section, in order to prove the legitimate origin of this right in the coadjutors of Saint Michael, he attempts to demonstrate from the founding document that the coadjutors of Saint Michael are parish priests no less than the parish priest of Saint John, and he cites the following words from that document: "so that in that parochial and curatial church of Saint Michael there should be and ought to be two portions to be guarded, governed, and administered by the lords, beneficed and rectors, in due time." He also cites these words: "They willed (establishing the curatial benefice) that the care of souls of said town should be so common between said rectors (of Saint John) and beneficed (of Saint Michael) that any person of said town itself, when it is necessary, may request the ministrations of the Sacraments from either said rector of Saint John or said beneficed of Saint Michael." From the act of translation of the collegiate church of the town of Olgiate Olona, carried out by Saint Charles Borromeo, he produces these words: "with... both from their personal visitations and through their visi-

[*Latin ed. p. 271*]

MILAN. "Thus far, 271 guardians have been appointed, and I have often seen, known, and understood that the town of Busti Arsitii exists, in which, besides other churches, there are two parish churches, namely, one under the title of Saint John the Baptist, which is the larger, and the other of Saint Michael." The assembly affirms that the church of Saint Michael possesses all parochial rights, based on the acts of the visitation carried out by the delegation of Saint Charles Borromeo in the year 1566, where the delegate reports as follows: "On that day, I visited the parish church of Saint Michael, which is an auxiliary to another parish church. The pastors of this church are two, one of whom is named..." In the year 1606, Cardinal Frederick Borromeo reported from his visitation of this church that "the office of

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caring for souls is exercised by the aforementioned pastor and four assistants throughout the entire town of Busti, and they minister the Sacraments without any restriction or division of jurisdiction, always preserving the precedence of the Reverend pastor and the church." The same. Archbishop Frederick Borromeo, in the year 1604, by his decree, established the order of precedence for the clergy of the town of Busti in funerals; he stated: "In funerals, with regard to the calling of the clergy, this order shall be observed, so that first in the church of Saint John the Baptist, the Reverend pastor, then the canons and curators, and successively the pastors of Saint Michael; afterwards the canons according to antiquity, and finally, the chaplains. In the church of Saint Michael, the reverend pastors of that church shall be called, then the Reverend pastor, and successively all others." Finally, the Reverend Monsignor Chieppi, in a report of a visitation carried out in the year 1242 by the aforementioned pastor of Busti, legitimately delegated, states that the church of Saint Michael is often called a parish church, and its curators are urged to appear in court against certain heirs in order to satisfy a pious bequest. From all of these things, the assembly believes that it is clear that the curators of Saint Michael are truly pastors. In the final section, the main objections of the opponents are refuted. Because the pastor asserted that the custom of the curators of Saint Michael...

[*Latin ed. p. 272*]

272 MEDIOLANEN. Concerning the invocation of Saint Michael, it is not established by long-standing and uniform practices, the assembly argues, adding to the already mentioned facts the administration of the sacraments, not only the celebration of marriages and funerals, as the prelate contended, to prove the right of patronage, according to the disposition of Synod 35. Then, Reverend Chieppi, with all his strength, attacks the principal argument of the adversary; namely, that the coadjutors of Saint Michael cannot in any way possess the right of patronage, since they are not parish priests, which he derives especially from the aforementioned sentence 1732. First of all, the assembly observes that, whatever may be the case with this sentence, the fact that occurred in the year 1780 cannot be denied, namely, 48 years after the celebrated decree, when, due to the death of the parish priest Canavesi, the curate of the place Sacconago, Saint Michael, celebrated the funeral with great pomp, as already mentioned, with the intervention of the prelate Busti, who later also, in the books of the dead, ratified all the proceedings with his signature. Regarding the sentence 1732, he directly points out that it openly contradicts the will of the founding charter of the coadjutors of Saint Michael; for while it states in n. 6 that the church of Saint Michael has never been a parish church, but only a sacramental and burial church, on the contrary, it is evident from the aforementioned documents and the records of visitations that it is repeatedly called a parish church. The same sentence also states that the

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care of souls in Burgos Busti Arsitii belonged and belongs primarily and exclusively to the lord prelate of the church of Saint John the Baptist, but the documents presented testify that, on the contrary, a common care of souls existed between both churches, so that citizens could seek sacraments and other parochial services indiscriminately in both churches. Therefore, the assembly says, that word "primarily" in the sentence is at least worthy of admiration; just as other words, namely, "that it does not consist of any possession of designating the church of Saint Michael with the title or name of a parish, or of attributing the name and title of parish priests to themselves (the coadjutors)." Hence, argues D. Chieppi, this sentence has been made of little consequence, and among other things, he proves this by the fact that the coadjutors of Saint Michael afterwards persevered in celebrating Mass on Holy Saturday, and sacred funerals.

[*Latin ed. p. 273*]

IN MILAN. On the sixth day of Lent, certain actions were carried out which were forbidden by the aforementioned decree. Furthermore, it is observed that the vicars of Saint Michael's cannot be said to be attached to the church of Saint John, from which they obtained canonical benefices under Cardinal Frederick Borromeo, for the wording of the instrument states: "However, they shall perform the sacraments and other parochial functions in the aforementioned church of Saint Michael's according to custom, and they shall reside in the parochial houses of the aforementioned church of Saint Michael's." Finally, contrary to the value attributed to them by the prelate who denies it, the books of administration of the sacraments, bearing subscriptions affixed by the aforementioned prelate, present a disposition of the Provincial Council I, explaining the function of the visitors regarding such books, and determining that they must inquire not only about the administration of the sacraments that has been carried out, but also whether the priest administering them "legitimately holds ecclesiastical benefices, or whether he has appropriated them to himself."

DEFENSE OF THE PRELATE. On the other hand, the patron of the prelate, Busti Arsitii, speaks in favor of his client. Firstly, he points out that there is only one parish in the town of Busti Arsitii, which is governed by one parish priest, the prelate of the collegiate church of Saint John the Baptist. But the priest Chieppi is nothing more than a coadjutor in the subsidiary church of Saint Michael's. Therefore, lacking parochial jurisdiction, he vainly claims the right of proximity. That there is only one parochial church in the city of Busti Arsitii, and that only one rector or parish priest must govern it, is demonstrated by the patron. In the year 1583, under Pope Gregory XIII, the holy archbishop Charles Borromeo of the Milanese church, transferred from the place of Olgiate Olona the praepositural and curatial dignity which the collegiate church of Saint Stephen in that town enjoyed, to the parochial church of Saint John the

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Baptist in Busti Arsitii. The rules for this transfer were thus established:

[*Latin ed. p. 274*]

274 MEDIOLANEN. The canonical benefices and endowments, and all the goods and rights of all of these, both individually and collectively, shall be perpetually transferred... that the portion of the parish entrusted to the care of the aforementioned church of Saint John the Baptist shall be incorporated and united to one of these canonical benefices, with the obligation of assisting the pastor in the exercise of the care of souls." And further, "Thus and in this way, that both of the aforementioned parochial portions, together with the aforementioned individual canonical benefices, shall constitute a single body and endowment, and shall perpetually retain the name and title of the canonical benefice of the curate and coadjutor." And then, "And yet, it must always be understood that, from this union and incorporation of the parochial and canonical portions, the pastor shall in no way be, nor be understood to be, exempt or relieved, nor shall he ever, in any way or by any means, pretend to be exempt, but rather he shall be perpetually held and obligated to personally exercise, as stated above, the principal care and burden of this care of souls by himself." These provisions apply to all canons, curates, and coadjutors of the collegiate church of Busti Arsitii, and undoubtedly also to the coadjutors of Saint Michael. However, in the solemn concordat of the year 1626, it is written: "Both portions of the aforementioned church of Saint Michael shall perpetually retain the name and title of the canonical benefice of the curate and coadjutor of the aforementioned collegiate church of Saint John the Baptist... and the canons shall be perpetually called canonical curates and coadjutors... and they shall enjoy the same privileges that are enjoyed and possessed by the other canons of the aforementioned collegiate church of Saint John the Baptist." Therefore, in the church of Saint Michael, says the author, although this is intended to serve the care of souls, only an auxiliary and coadjutorial function is exercised, as is the case in any parish, whenever the pastor, due to the frequency of the people, cannot alone fulfill the ministry, and a coadjutor is added to him in another church, as stated in chapter 4, session 21 of the Council of Trent. However, it is always true what Pignatelli states in cons. 143, no. 15, vol. 9, namely, "That other churches are dependent and auxiliary, erected for the greater convenience of the people, and are not parochial, but for support and assistance."

[*Latin ed. p. 275*]

MILAN. 275 members of the parish, and so that the sacraments may be administered more to the people." Furthermore, it is clearly established in law, the advocate argues, that dependent churches cannot, in any way, be considered equal to parish churches, because they lack neither territory nor population, as is required for a parish jurisdiction, as testified by the Rota,

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in Decree 397, part 13, no. 17. "Hence, equality is excluded, which could only be considered if a completely distinct population were assigned to each parish; in which case, the parishioners would be obliged to receive the sacraments in their own parish." And concisely, Reiffenstuel in title 5, book 3, decree no. 30: "For a certain benefit to be properly called a curacy or a parish church, it is required that it be governed solely, in its own name: for one church must belong to only one priest; just as one body cannot have two heads, otherwise it would be monstrous." With these things established, the advocate argues, the coadjutors, namely St. Michael's, can certainly not claim any jurisdiction. For, in the erection of the coadjutorship, any addition of territory or population was lacking, and nothing else was done in the church of St. Michael's regarding the care of souls, than to add coadjutors to the parish priest, who would not exercise the care in their own name, but "The Prefect must perpetually hold and be obligated to personally exercise the care and burden of this care of souls." The advocate emphasizes that all of this was confirmed by a sentence issued in the year 1732, after a case in which the nature of coadjutor benefits was hotly debated on both sides, in which the Milanese court ruled, "That the Prefect must be maintained and remain in possession, or quasi-principality, of the care of souls and the designation of true and unique parish priest in the entire town of Busti Arsitii, depriving, with regard to the aforementioned RR. DD. Marchesium and Crispum, and holding them as his coadjutors in all things concerning the care of souls, subordinate to him in all respects." Finally, the same Archdiocesan Court adds testimony.

[*Latin ed. p. 276*]

276. In Milan, a judgment was issued on November 3, 1892, that is, more than two years after the sentence was rendered against the defendant, stating: "1. The parish of Busti Arsitii is one, with a single pastor, who is the parish priest of Saint John the Baptist. 2. The benefice of Saint Michael is to have titular canons, dependent on said parish priest." Because the canon Chieppi invoked custom and prescription, the Advocate observed that, since the beginning of the possession is clearly established, no one is permitted to oppose his title, as Paul states in Romans 3:1: "For the just shall live by faith." Furthermore, "It is also taught by the ancients that no one can change the cause of his own possession." To this, A. De Rubeis adds in *Annals of the Sacred Roman Rota*, December 14, volume 3, letter A, number 2: "Immemorial prescription is always silent when the beginning is established." However, the defendant insists that how can a certain and definite beginning of the possession of the canons of Saint Michael be ascertained, when these have always been called coadjutors? And does the Archdiocesan Court acknowledge that the denomination of "titular coadjutor" is used in the publication of calls to these benefices? Furthermore, whatever the coadjutors may have done in the care of souls in that church, they were

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not pastors, but acted in their own name, and nothing they did could have conferred upon them any possession, because it was done in bad faith, and once bad faith is established, any prescription is removed. For, "he who possesses without a just title and in bad faith does not acquire prescription, even after a long period of time has passed." *Sacred Roman Rota*, December 17, 1833, number 9, *coram Zacchia*. Therefore, the Advocate concludes that, even if the coadjutors of Saint Michael or of the vicariate, or if they exercised any other parochial office in the church of the village of Sacconago, they did not possess anything for themselves, but for the parish priest, in whose name they carried out the care. Since the canon Chieppi, in his allegations before the Archdiocesan Court, has presented several acts of parochial office, this line of argument is superfluous and irrelevant, the Advocate maintains. For no one denies that coadjutors can exercise the care of souls in a filial church.

[*Latin ed. p. 277*]

MILAN. 277. Furthermore, the adversary does not invoke anything other than two baptisms, those of the years 1645 and 1708. It would be ridiculous to present these two examples across the centuries. However, the matter was decided in the year 1732, the defender argues, and any possession invoked by the adversary is rejected. The same official of Busti Arsitii, 'in a certain Italian commentary,' clarifies the facts in dispute! For he places great confidence in the judgment of the year 1732, and observes that the adversary can only adduce the funeral of the deceased parish priest Canavesi of the place Sacconago, performed by the curate St. Michaelis, in the year 1780, against the authority of this judgment. Then he concludes that such a fact cannot overturn the judgment. Regarding this very fact, he observes that the subscription of the official Rossi in the book of the dead does not refer to this act which precedes it. This circumstance, the Reverend Chieppi does not deny, stating that his presence sufficiently validated the matter in another way. On the contrary, he adds that the presence of the official can be explained in many ways, and that the legal effects thereof, he says, were carefully dissipated by the official himself, who, upon returning home, protested to the Curia against the conduct of the curate St. Michaelis, so that three days later, after such a resolution, another Vicar was appointed in place of the coadjutor St. Michaelis. However, the Reverend official does not cite the source from which he draws these certainly weighty facts. Then, he presents to his opponent more facts, confirmed by legitimate documents, which occurred in the first half of the current century, by which, the official says, the audacity of the coadjutors of St. Michaelis in invading the rights of the parish priest of Busti Arsitii was repaid. First, he alleges these words directly from the Milanese Curia, in the year 1803, addressed to Mr. Joseph Marchesi, the same curate of St. Michaelis, who presided over the funeral of the parish priest Canavesi, of

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the place « Sacconago »; these words refer to the concession made to the church of St. Michaelis for a hospital for the troops of the French army, and against this curate who wished to transfer the sacred functions at his own discretion to another church, it was decreed—

[*Latin ed. p. 278*]

278 MILAN. We have been informed that, independently of the parish priest of Burgos, you established an oratory of Saint Roch in place of the coadjutor and sacramental church of Saint Michael, which was occupied by military personnel, and that, due to certain functions performed, you provided other proofs that you were not appointed as a coadjutor to the parish priest, but as a curate with a portion; and this, contrary to the judgment of September 5, 1732, supported by irrefutable documents. Similar events followed in the years 1809, 1817, and 1831; from which, the parish priest believes, sufficient legal arguments have been added to the facts. With these premises, the purpose was to resolve the doubt as to whether the judgment of the archiepiscopal court of Milan should be confirmed or overturned in this case. RESOLUTION. The Holy Office, after deliberation on April 14, 1894, decided to overturn the judgment. From which, the following may be gathered: I. Coadjutors of a parish, acting in this capacity, exercise jurisdiction within the parish in churches that are considered auxiliary, erected for the greater benefit of the people, and for the support and assistance of the mother church. II. One who lacks proper parochial jurisdiction cannot, in his own name, exercise any parochial rights or privileges, which are granted by sacred canons, or which can be acquired by legitimate prescription. III. A parish priest, to be considered a proper parish priest, must govern the parochial benefice in his own name, with a people entirely distinct from others. IV. In the case of coadjutors of a parish priest, they exercise parochial jurisdiction in place of and in the name of the parish priest, and therefore, they cannot claim any rights or privileges for themselves, even those acquired by prescription.

[*Latin ed. p. 279*]

279. MARRIAGE OF NAPLES. On June 9, 1894. Session 24, chapter 1, Concerning the reform of marriage. SUMMARY OF THE FACTS. Having been preceded by and having observed the threefold declaration in the manner prescribed by the Council of Trent, Francis, of the noble family of D'Auria, aged 25 years, and Justina Liguori, a young woman of 23 years, entered into the marriage bond in Naples on July 31, 1876, in the presence of the parish priest of the Church of Matris Dei. Several circumstances, which will become apparent from the following accounts, indicate that this marriage was preceded by events that suggest a lack of freedom, at least with regard to the bride, in giving her consent. They state that the young woman, orphaned by her mother and abandoned by her father, after

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having been expelled from the College of St. Marcellinus, where she was being educated, was forced by her uncle to enter into a lifelong bond, and that she did not understand the obligations she was undertaking at that time. Consequently, they assert that at the time when the couple lived together, mutual love was entirely absent from their household. However, it is established that the marital life, shortly after the celebration of the marriage, continued until September 25, 1879, and that Justina gave birth to a daughter on February 19, 1878, who is still alive. Almost a decade after the separation, the woman turned to the Neapolitan court, requesting that a process be initiated concerning the nullity of her marriage, based on the grounds of coercion and fear. After these requests were received by the Cardinal Archbishop of Naples, legal proceedings were initiated before the ecclesiastical tribunal, delegated for this purpose, in the month of May 1887. The plaintiff was represented by an advocate, as was Francis D'Auria, and nine other witnesses were called by the woman or her representative, all of whom, after being questioned under oath, gave their testimonies. Subsequently, the man was also ordered to present witnesses; but he declared in writing that he had no witnesses other than those presented by the plaintiff; with regard to this matter, he completely relies on the testimonies of those presented.

[*Latin ed. p. 280*]

280 In Naples, the husband's advocates began to challenge the marriage, alleging that it had been contracted secretly, since the marriage ceremony had taken place before the parish priest of the Church of Matris Dei, in whose parish neither of the spouses had a domicile or quasi-domicile. However, when it was demonstrated from the parish register and from the testimony of the aforementioned parish priest that the same parish priest, by name, had been present at the marriage, the parties refrained from further investigation. Therefore, the appointed judge, having heard the arguments presented in writing by the defender of the marriage bond, delivered his judgment on August 28, 1890, in which, after careful consideration, he declared: "The marriage entered into on July 31, 1876, between Franciscus D' Auria and Iustina Liguori is null and void, because of a lack of consent, which was presumably given by both spouses, and certainly by the woman Liguori, under coercion and through grave fear caused by unjust pressure applied to extort consent to the marriage." From this judgment, the defender of the sacrament appealed, according to the provisions of the Constitution of Benedict. A Synopsis of the Arguments. The arguments upon which the petitioner, Iustina, relies are contained in the exposition of the manner in which Iustina was "delivered to the institution for the education of girls, under the title of Saint Marcellinus, by her mother, when she was barely six years old, in order that she might be imbued with liberal disciplines and with Christian and civil education, and also to avoid the

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scandals that arose from the home due to the illicit habit of her father with women, mostly servants of the family." When she reached the age of eleven, her mother, Aloysia Campobasso, who was in charge of her care, died, and the father, especially after the death of his wife, became infatuated with a certain unworthy woman, named Francisca Valente, and left her in the aforementioned institution, so that it appeared that he had completely lost all paternal affection for his daughter. Indeed, he no longer provided the institution with the monthly stipend, nor did he provide the necessary assistance for the sustenance of his daughter Iustina, and she was therefore removed from the aforementioned institution for the education of girls, taking a VOW.

[*Latin ed. p. 281*]

In Naples, she would have been expelled, had she not, through her virtuous conduct and progress in her studies, gained the favor of the governing body of the college, and thus, as a reward for her diligence, had been granted the opportunity to remain there. Justina had scarcely completed the third year of her life when, in June of 1875, she left the educational college due to family circumstances. It was then that she first saw the Lord Francis of Auria. They spoke no words to each other concerning marriage on that occasion. Nevertheless, the aforementioned Valente, who held the father of Justina, residing in the village of Ludo, under her sway through her insidious enticements, proposed marriage to Justina with Francis of Auria. This woman, Valente, was greatly concerned that such a marriage should take place, both to favor the Lord d'Auria, with whom she was conspiring, and to strengthen and extend the dominion she had usurped and exercised alone within the Liguori family. Therefore, she began to persuade the young woman, first through letters, then through words, and later through exhortations, entreaties, and insistent prayers, and finally through deceit, to accept the love of the young man, d'Auria. Although Justina's mind seemed resistant at first, she was nevertheless swayed, more out of youthful naiveté than out of a firm determination of her own will, by the charm of d'Auria. Thus, a mutual affection arose, and a correspondence began between Lady Liguori and Lord d'Auria, to the detriment of the aforementioned Valente, from whom Justina recognized the origin of all her troubles. When Justina returned to the college after the autumn holidays, as was customary, and the aforementioned scheming Valente was forbidden to access the college to deliver letters, the young man, d'Auria, having conceived a plan with another adolescent, the suitor of another young woman residing in the same establishment, and who was bound to Justina by a bond of friendship, began, in response to the sun of the house, to throw letters tied to stones, using ropes, under the cover of night, for Justina and her companion to collect. They then used

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the same ropes to receive the responses of the two young women.

[*Latin ed. p. 282*]

282 In Naples, it happened that, on the second day as evening approached, the letters that had been thrown, which had appeared to have fallen upon the bed of a young girl, were to be taken by those who wished to see them. Suddenly, they collapsed and, bleeding and devoid of sensation, were carried by other girls from the same dormitory to the infirmary of the Institute. As soon as this event occurred, which was considered a most serious scandal in the college, it was revealed to the directress. Consequently, both Justina and another girl, both implicated in the same fault, were expelled from the college after eight days. Justina, having nowhere to turn, took refuge in the home of her uncle in Campobasso, who, learning the cause of his niece's distress, received the young girl into his home under the explicit condition that she would marry Francis of Orense, and he absolutely decreed that the marriage must be celebrated within fifteen days. The unfortunate Justina wept, pleaded, and begged. But in vain. "You," said her uncle, (that is, Francis of Orense), "must compensate for the damage that has been done to you, either willingly or by force." However, Lord Francis of Orense, to whom the expulsion of the girl Liguori from the college had been made known by Nicholas Campobasso, and who claimed that the woman Valente had deceived him, asserted that the girl Liguori possessed a dowry of ten thousand ducats. At the beginning of negotiations regarding the marriage, he seemed not to object. However, when he discovered that this dowry did not exist, he completely changed his mind. The uncle of Justina, not accustomed to such contradictions, believing that he could provide for the good of his niece in no other way than through marriage to the aforementioned Lord Francis of Orense, forced him, by threats, to take Justina as his wife. This is what Francis of Orense did a few days or weeks after Justina's expulsion from the College of St. Marcellin, namely, on July 31, 1876. Now, whether the marriage was null due to the lack of consent, given the completely adverse and reluctant state of mind with which Justina claims to have entered into this marriage, due to the moral, namely, the violence that was inflicted upon her, especially by her uncle, Lord Nicholas Campobasso, a proper process was completed, according to the procedures of the Benedictine Constitution, and finally, the cause was...

[*Latin ed. p. 283*]

NEAPLES. The archiepiscopal tribunal, subject to the royal archiepiscopal authority, held a discussion and issued a judgment regarding the invalidity of this marriage, due to a probable lack of consent on the part of the man, and certainly on the part of the woman, because the contract was entered into under coercion and grave fear, unjustly applied to extort

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consent for the marriage. Regarding the series of facts presented, it must be said, "Whether such a judgment, pronounced by the Neapolitan Archiepiscopal Tribunal, should be confirmed or rejected; and to this doubt, as a consultant, it seems that the answer should be given without hesitation: it should be confirmed." To make this response clearer, the following three points are sufficient: Firstly, full deliberation was lacking in the matter considered; that is, the matter was not sufficiently understood by the girl, who does not seem to have sufficiently grasped the nature of the marital state, what it entails, and what are the particular substantial obligations; secondly, the freedom required by law was lacking in order for the consent to be valid. I have said that the consent required by law: although it may seem to be somewhat voluntary in the marriage contract, it is not sufficient for the consent required. For consent must be perfectly free, not only from coercion, but also from fear. Furthermore, in this case, whether we consider the antecedents, the concomitants, the act of contracting itself, or the consequences, the consent was not free. All the Doctors, when asked how much deliberation is required for marital consent, "respond that full and perfect deliberation is required: hence, a superficial and incomplete understanding is not sufficient, nor is an imperfect consideration of the marital obligations by which the spouses bind themselves. For to deliberate is to consider and define what is proper to the intellect. Hence, the same act of the will is said to be free and deliberate, free from the will, deliberate from the intellect considering the suitability or unsuitability of actions or omissions, and determining the action or omission according to its merit or demerit. We, in this first point, have considered the aspect of the intellect, or the full deliberation, and..."

[*Latin ed. p. 284*]

"384. We find that the NEAPOLITANA lacked perfect use of reason in the matter considered. Indeed, during the initial visits made to her, concerning the matter of marriage, Francisca Valente, a lively and dishonest woman, did not, to the knowledge of anyone, suggest any idea of marriage, as the girl herself testifies. Furthermore, Iustina is strongly defended by her maternal grandmother, whose authority she held in high regard; hence, she writes to Francis d'Auria, stating that she will immediately break off all relations with him. And although the aforementioned Francis d'Auria was greatly angered by the girl's resolution, as he demonstrated in numerous spoken and written words, FIRMA, persevered for a long time, until Francisca Valente seemed to have somewhat abandoned that intention. However, neither the decrees of expulsion from the College, nor the prayers, nor the imminent dangers to the girl, nor the letters sent to the Directress and other superiors, were able to dissuade her, so that she was reduced to the greatest distress by Iustina. Having been expelled and not being received back into her father's house, from whom she received only the

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most evident signs of neglect, contempt, and all kinds of abandonment, she was forced to turn to her uncle, Nicolaum Campobasso, who, however, only took her away from the monastery on the condition that she would marry Francis d'Auria within fifteen days. However, the woman's lengthy depositions recount that she sought to demonstrate her own ignorance in matters of marriage due to her age, and the moral influence with which she was tormented by her own parents. With these things noted, it is clear, says the Consultant, that there was no prior awareness of the mind in the matter, and therefore no perfect consent in the matter, which afterwards, habitually and effectively, would have influenced the very celebration of the marriage, and which, if required in this way, seems to have been lacking. But what deliberation there was in the very celebration of the marriage is discovered from the mouth of Iustina herself, which is confirmed by the seventh witness. All of these things are consistent with what occurred after the celebration of the marriage. Indeed, it does not appear that there was that necessary awareness in the mind of Iustina."

[*Latin ed. p. 285*]

NEAPOLITANA 285: The knowledge of the thing to which the contracting parties obligate themselves is sufficient. For, besides the cause, the substantial elements of a contract are the free will and the thing; and with regard to the latter, it must be certain in the mind and manifest, that is to say, it must be clearly apparent what is to be given, what kind, and in what quantity. Leg. 94, 95, 115 de V. O. Furthermore, this determination of the thing in the mind was not present in Justina. By the very law of nature, a boy and a girl must understand the force of a contract, or the obligation arising from it. St. Thomas states in 4 distinct. 36 q. 1 a. 5: "According to the positive law, it is determined that marriages are not entered into before that time of discretion, in which each can sufficiently deliberate about the marriage, and render what is due to the other; and if they are not so entered into, they are annulled." And indeed, it is true that our betrothed could have sufficiently deliberated about the marriage, as Francis of Auria did, but Justina did not sufficiently deliberate about the marriage in fact, as is evident from what has been alleged. Moreover, is there not a mutual consent, that is, so that each gives to the other the right over his body and receives it, as is clearly stated in chapter 2 De sponsa duorum: "Faith is consent when each mutually grants to the other, and mutually receives." Truly, Justina does not seem to have understood and performed this mutual transfer of rights over their bodies: not at the time of the contract, because she was not free, nor after the contract through the subsequent consummation, because the error remained in her mind concerning the validity of the marriage, as will be seen below. We are dealing with a girl who, although she has the age required by law to contract marriage, is to be considered immature, since, from what has been said, it is clear that she does not possess the

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judgment necessary for entering into marriage, especially if compared to the age required for religious perfection: for often the state of marriage is equated with this, due to its perpetuity; and religious profession is altogether invalid before the age of sixteen is completed, according to the Council of Trent, but because of the immaturity of judgment; hence, some are sometimes considered, proportionally, to be incapable of marriage, by a certain analogy.

[*Latin ed. p. 286*]

286 In Naples, contrary to the common assertion that full and perfect deliberation is required, the objection drawn from the aforementioned canons concerning the marriage of minors does not hold. It is stated in c. literas 4 de desponsat. impub. that for the valid contracting of betrothal, the age of seven years is sufficient; therefore, by the same reasoning, the legally established time is always sufficient for betrothal in the present. For the aforementioned, it is answered: It suffices that seven years have passed, insofar as it pertains to presumed betrothal. I concede: In truth and in validity, it is always sufficient, even in the eyes of the law. I deny the universally asserted claim. In the cited canon, it is stated only that no impediment to public decency arises from betrothals contracted with a minor under seven years of age, because prior to that age, one is not presumed to possess the maturity of judgment necessary to be bound by betrothal. Therefore, if it were to be proven that betrothals contracted after seven years were conceived solely from imperfect deliberation, I deny that they would be valid even in the eyes of the law. This principle, applicable to the age required for betrothal in the present, applies to those who, existing in a state of imperfect deliberation, contract marriage. Finally, it is important to note here that several Doctors add that deliberation is not sufficient for merit or demerit. Cf. Castropal. D. I. de sponsal. p. 2, n. 4, and Krimer, who in IV Decretal, n. 388, states: "For demerit can be incurred even through a slight sin, for which even imperfect awareness is sufficient; but this is not sufficient to impose upon oneself a private law or obligation, even in matters of little importance - from which, a fortiori, it follows that for betrothal in the present, or marriage, a fully deliberated consent is required; since by it, the contracting parties impose upon themselves a law of perpetual status, gravely obliging them; thus, it is commonly said: although there is doubt as to whether sufficient deliberation was present, it is presumed to have been present, as taught by Panorm. in c. Dudum 8 de Convers. Coniugai, because it is a natural quality of a human being who readily uses reason." But let us descend more closely and directly from understanding to will, and inquire: Has the act of celebrating marriage in this case truly been performed with

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that freedom which the law requires for valid consent? And we answer:

[*Latin ed. p. 287*]

NEAPLES 287: As the Neapolitan Curia most correctly declared and defined, concerning the force used and the grave fear inflicted. Let it be heard that Alexander III, chapter 14, concerning betrothals and marriages, states: "Where there is no place for consent when fear or coercion intervenes, it is necessary that, where the consent of each is required, the matter of coercion be repelled. For marriage is contracted solely by consent, and when this is questioned, it must enjoy full security, and the intention of the person must be investigated, lest, through fear, he say that he consents when he hates it, and thus follow the consequences that usually result from forced marriages." Cf. c. Veniens 15, c. Consultationi 28, c. Significavit eodem Be eo qui duxit. And rightly so: for the unhappy outcome is that neither the good of the offspring is considered, because the one who is forced, due to dislike and aversion, does not intend the procreation of offspring, nor is the good of the faith of marriage achieved; because, due to the unwilling marriage, the spouses do not render what they ought, and easily fall into adultery. To make this response clearer, we recall in our memory what and how much must be considered from fear, and under what conditions, in order to annul a marriage. For fear is the effect of force used, and as Paul I states, force is the impetus of a greater thing, which cannot be resisted. It is divided into absolute and conditional; the former completely removes free consent, while the latter only diminishes voluntary consent. This, or the conditional force and fear, are considered synonyms, or at least closely connected, as cause and effect: for force consists in inspiring fear, and it acts as an agent, while fear exists in the person to whom the force is applied, and it acts as the patient. Hence, force and fear are correlative, and what is said of one is also understood of the other. Cf. title De his quae ex causa fiunt. Fear, however, is defined by the jurists as the trembling of the mind due to present or future danger, L. 1. D. De eo quod metus causa gestum erit. Fear irritates not only positive law but also...

[*Latin ed. p. 288*]

288 In NEAPOLITANA, [a person] is affected by fear, either by the law of nature or by some other circumstance. And indeed, reason teaches that the person who has been affected by fear, even if the fear is unjustly induced, ought to enjoy that benefit which all civil laws (according to the law of nature) grant to those who contract under fear, namely, the restitution of things to their original state. But this benefit cannot be enjoyed by the person who has been affected by fear, if the marriage was validly entered into; for the marriage itself, once it has been validly entered into, is irrevocable. Therefore, this benefit is enjoyed only during the time of contracting, insofar as the contract is invalid. But whatever may be said about the disso-

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lution of the marriage by reason of fear, it is certain that this impediment does not admit of a dispensation; but it is necessary that the cause of the fear be removed. Alexander III, c. Cum locum De sponsal. "Where there is no consent, whether by fear or coercion; it is necessary that, where the consent of each is required, the matter of coercion be removed." If, however, we are speaking of a marriage already contracted, it will never be declared null in the external forum unless it is proven that fear rightly influenced the consent, which we prove by demonstrating all the conditions which the Church requires for grave fear. When fear is divided a) by reason of the cause, into that which is caused by a necessary cause, and that which is caused by a free cause; b) by reason of the manner, into that which is caused justly, and that which is caused unjustly; c) by reason of the quality, into light and grave fear, which can occur in two ways; either directly, namely, by extorting consent from the person who is afraid, or indirectly, and for another reason, so that, however, the person who is afraid, on that occasion, gives his consent, hoping to free himself from fear: the question arises, which of these fears invalidates the marriage. We shall answer this question shortly when we answer the question, what kind of fear it must be, with what conditions, in order to invalidate the marriage. In order that the marriage may be invalid because of fear, it is required that: 1. The fear must be grave, cap. Consultationi 28 De sponsal. et matr., that is, such as would fall upon a constant man, as in Alexander III, c. Veniens 15 De sponsal. "unless he was compelled by fear, who could have fallen upon a constant man, to betroth her." He who could have fallen upon a constant man, a

[*Latin ed. p. 289*]

NEAPOLITANA 289. If the evil, indeed, which is feared is such that it can overwhelm even a man who is otherwise steadfast, that is, prudent and discerning, without any apparent disgrace, inconsistency, or lack of fortitude, then the fear is said to fall upon a steadfast man. However, it must always be understood that a subordinate reason must be considered, because the evil that is imminent may be such that, with respect to a particular subject, it can reasonably and prudently be feared without any apparent inconsistency; but with respect to another, it may not. Therefore, the fear that falls upon a steadfast woman is sufficient, as Barbos states in chapter 5 of *Consultationes de sponsalibus*. Indeed, it is certain that women, even steadfast ones, are, by reason of their regular and observed weakness of sex, more easily led to certain things that a prudent man would not do, by the fear of evil (which, with respect to a man, is not so great). Hence, in chapter *Cum dilectus*, it is stated that fear is not to be considered if it is not such that it could fall upon a steadfast man, but this is not to be understood of the fear of death, but of any grave fear, according to the judgment of the judge, as the Gloss notes in the aforementioned chapter.

And so, among the examples of grave fear, the Doctors also include exile,

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the loss of status, the violation of a virgin or an honest widow, the ruin of reputation, the enormous indignation of a father, and the severity of a husband. These last examples of evils, if they move a steadfast man or woman, will certainly move a girl, a modest one, or an orphan, as in the case of Iustina.

Hence, the Doctors rightly note that it is sufficient for the fear to be relatively grave, and therefore, the judgment of this [fear] must be presented, considering the circumstances and qualities of the person who is fearing, and the person who is instilling the fear, and the nature of the evil.

Secondly, the Doctors note that the evil that is feared must not only be grave, but it must also be reasonably believed to be imminent, because an evil, however grave, if it is less likely to occur, will not move a steadfast man.

Thirdly, the Doctors consider a fear to be grave if such evils are imminent even for relatives, up to the fourth *gradum*, according to St. Alphonsus de Liguori, *Theologia Moralis*, 1047. As I have stated, it is required that the fear be unjustly instilled, according to the *Acta*, Volume XXVII, page CCOXVII, 19.

[*Latin ed. p. 290*]

290 In NEAPOLITANA, if a judge, through the fear of punishment, compels someone to marry a girl whom he has wronged through rape, this fear is just, arising from the authority of the law, or rather, from the very lawgiver who instilled that fear. If, however, he commits rape (stuprum), as stated in c. 1 and c. P concerning adultery and rape, then the fear is justly imposed when, if it is instilled by a free cause, it is instilled by one who has the right to inflict a serious harm, unless marriage is contracted. As I will explain, a certain condition is required: that the fear be externally imposed, and not one that the contracting party himself has inflicted upon himself. For the Doctors note that the evil feared, and therefore the fear itself, can arise from a natural cause or a free cause; if it arises from a natural cause, it is called fear instilled from within; if it arises from a free cause, it is called fear instilled from without. From this latter, fear can be instilled justly or unjustly, or even with injury to the one experiencing the fear. But this last can occur either directly, or with the intention of obtaining consent from the person, for example, in a marriage contract; or indirectly, for another purpose, for example, so that, through the sacrifice made to an idol, the person, fearing the evil, chooses consent to something not directly intended by the one instilling the fear. Hence, the question arises whether such fear must be directly intended to extort marriage. I answer that many, like myself, require this condition, that the fear be directly intended to extort consent to marriage, because they say that, in such a case, the person is not so much compelled by fear as he chooses a means of avoiding danger, and the marriage is simply voluntary. However, Lugo, in *Institutiones*

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and *Jurisprudentia*, disp. 22, no. 175 and following, presents the opinion of those who distinguish between when fear is justly inflicted and when it is unjustly inflicted, and in the latter case, even though the fear is instilled to obtain something entirely different (by which fear, or by the evil feared, the person chooses marriage in order to free himself), they hold the same opinion as if the fear were directly intended to extort consent, namely, that the marriage is invalid. This is the opinion of Lessius, and Schmalzgr. i. 4, t. 1, no. 399, among others, supports it, and Schmier is cited by him.

[*Latin ed. p. 291*]

NAPLES. 291. The fear of Justina clearly demonstrates all of these conditions. Therefore, her marriage is invalid due to a lack of consent. There exists 1. the condition that, namely, she was subject to a grave fear. a) First of all, let us recall what we said above, concerning the preliminaries to marriage, namely, 1. that a serious intention never appeared in Justina, but rather a certain childish vanity; 2. that from the beginning, there was a certain inclination towards Francis of Orense, which was subsequently retracted due to the rebukes of her grandmother, as demonstrated by the declaration and protest made to Francis of Orense himself, although later she seems to disagree; which, as is evident from Justina's confession as related above, is not sufficient, but an express consent is required, which is certainly lacking, and the external signs of which do not portend any love; and this, before her expulsion from the college. b) After this expulsion, there is still no positive sign of "consent," even though Francis of Orense was meeting with her at the house of her uncle, Nicholas Campobasso. Indeed, c) at that time, precisely because of this expulsion, that fear is revealed, which, at least according to positive law, impedes a free and valid consent. For, as the Sacred Congregation of the Council also confirms in its response and decree in *Parisien, matrim.*, June 25, 1864, and in *Veneten. matrim.*, May 24, 1889, not only open force, or violent coercion, makes a marriage invalid, but also fear, which is a coercion in a certain sense, since he who consents under fear is more likely to suffer than to act, as stated in *cap. Sacris quae vi*. Thus, the Roman Praetor L. ff. said in *de his quae vi*: "I will not consider as valid that which is done under fear, because fear takes away the freedom of consent." However, Justina suffered a grave fear due to a serious evil impending upon her in entering into such a marriage. For, having been expelled from the college, Nicholas Campobasso, her uncle, received her into his home under an irrevocable condition, namely, that she would marry the young man of Orense within 15 days, under the threat of expulsion from his house and total abandonment. From these circumstances, it is entirely clear that a grave fear was instilled: for we are

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dealing with a woman,

[*Latin ed. p. 292*]

292 A young girl from Naples, exceedingly modest, lacking any experience of life, was soon expelled from a school and, after being expelled from the school, was driven out of her uncle's home, and thus abandoned in every way, facing the very real danger of prostitution in that city, pursued by the deceitful woman Valente; therefore, considering these circumstances, and especially the character and disposition of the aforementioned uncle and his wife, we are dealing with a gravely unjust act.

II. This grave injustice was unjustly inflicted upon Justina. For all children are entirely free in the choice of their state of life and in contracting marriage, and all the more so when choosing a particular person; and therefore, parents (and even more so those who succeed to the place of parents) gravely sin if they obstruct the marriages of their children without cause, and all the more so if they force them into marriages they do not desire, not only because of the scandal and the bad consequences that follow from forced marriages, but also because they deprive their children of their rightful freedom in the choice of their state of life.

It is certainly known to all that the contract of marriage and betrothal is, by natural and divine law, so personal that no one, not even a father, can validly consent on behalf of a son, unless he has a special mandate from him. But the rights of this Justina were entirely violated when, through the machinations of Francisca Valente and the vexations of her uncle Campobasso, who was incited by her, she was brought to Industria, so that she might either expose her chastity to certain dishonor, or marry Francisco d'Auria. Furthermore, this young man, although he had previously desired these nuptials, believing that Justina possessed a dowry that the aforementioned Francisca had instructed him to expect, nevertheless withdrew from the intention of marrying Justina; and he later returned to that intention, only to be forced by vehement and unjust threats from all the uncles.

Nor could there be a just reason for Justina's expulsion from the school: for the expulsion is not due to Francisco d'Auria, and much less to the great fault of Justina herself. All was accomplished through evil deceit, whether it be the threats made to the young man d'Auria, or the neglect and every kind of abandonment of the girl on the part of her father.

[*Latin ed. p. 293*]

NEAPLES 293, or rather, a wicked persecution by the uncle, Nicholas, in Campobasso, to the effect that the girl, Justina, inexperienced in worldly matters and ignorant of things, should marry the aforementioned Francis. III. From this, it is gathered that all coercion was employed, and that fear was instilled from without, although not by one of the contracting parties, but by another, indeed, by many others; that this fear was directly

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and in order to extort consent to such a marriage. Therefore, neither is condition 3 nor condition 4 lacking with regard to Justina. From all that has been said so far, it is clear that her consent was lacking at the time, and that it was not legitimately given, since it must be entirely free from fear, as the aforementioned laws proclaim. The lack of such freedom for marriage is itself alleged by d'Auria, and all witnesses speak in the same sense under oath. OPINION OF A THEOLOGIAN. It is universally held that matrimonial consent presupposes both the use of reason and a certain "discretion" in the contracting parties. Pirhing responds for others, who in Book IV, title 1, 85, says: "Two things are necessarily required in marriage contracts, first, knowledge, or the judgment of discretion, by which one understands what he is doing," etc. - But before puberty, such discretion is not presumed, unless it is proven; after puberty, on the contrary, it is always presumed, unless the contrary is demonstrated. - This doctrine is common; see Gasparri, volume 2, no. 778. How can the "contrary" be established for young people? First, the question is not about "will," therefore arguments that show "repugnance" are of no weight, nor do they invalidate the matter; indeed, all of this can stand perfectly well with the "knowledge," that is, the modest and virtuous understanding that chaste and innocent girls usually have about this matter, for which a greater understanding is certainly not required. Rather, it should be proven that the mind of the boy or girl is completely devoid of any knowledge of marriage, so that, in this regard, they can be equated with the understanding of infants or simpletons; and since we are dealing with knowledge, which, guided by nature,

[*Latin ed. p. 294*]

294 In Naples, or rather, in a confused state, at least some understanding can be acquired; but this equivalence becomes utterly impossible when the intellect is in a normal state. Otherwise, it must be said that this is the case with the feeble-minded, or with some kind of deficiency, whether it be congenital, or due to slowness of intellect, or to immaturity of age. This seems to have occurred in the case of "Ventimiliens. Matrimonii," which was treated by the Sacred Congregation of the Council on May 19, 1888. It was alleged that there was "no consummation," but rather the marriage was vitiated, because of the affinity arising from an illicit union, because of force and fear, and because, although the girl was a minor, she lacked the discretion due for marriage. In the discussion of the case, neither the affinity nor the force appeared sufficient, as all the witnesses unanimously affirmed. Catharinam, who was otherwise a girl of 12 years of age, dressed at the time of the marriage like a little child, devoted to childish games, and slow of intellect, was considered incapable and unsuitable for marriage, having not at all understood the obligations of marriage and the like. Therefore, the Sacred Congregation judged the marriage to be null. But from this decision, nothing can be inferred in favor of Justina, because the

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circumstances are different. This one was not twelve years old, but fifteen; not slow of intellect, but on the contrary; for she received a reward for her progress in her studies, and was allowed to stay in the college with a reduced or no pension. Furthermore, from the records it appears that instruction in the Catechism was given to the students by a competent and diligent priest, and therefore it is to be presumed that Justina, like the other girls, understood the Sacrament of marriage. Finally, the very accounts that she had with D'Auria, the letters given and received, which were moreover read by her companions, one of whom was at least twenty years old, and the conversations that arose from them, completely exclude the hypothesis of such ignorance, which would vitiate or destroy the matrimonial consent. Whatever may be the case regarding coercion, those things that are alleged about a "lack of discretion" are vain; indeed, does not Justina's very opposition, of which there are undeniable arguments in the records, indicate a knowledge, more or less perfect, of both nature and of the rights of marriage?

[*Latin ed. p. 295*]

NEAPOLITANA 2U5 But the matter was investigated, and it was determined that, although there may be perfect knowledge, consent can be vitiated from another aspect, so that no marriage follows; this happens, setting aside for the moment other cases, whenever someone is compelled by force and coercion to give consent. "Fear," says Cardinal D'Annibale, "never fails to invalidate a marriage when it vitiates the contract: and indeed, by its very nature, because once begun, it cannot be undone; whether by natural or positive law, it is not entirely certain." This fear, unjustly instilled to induce the contracting party, must be serious, or it falls upon a steadfast man, as the Theologians and Canonists commonly say; however, Sánchez observes, in reference to Disp. I I I, 5, these words should be understood more in the sense of a proverb than as being to be taken literally. Therefore, fear, although slight in a man, can be serious in a woman: indeed, even among women themselves, serious fear is not something absolute but relative. For certain evils, which are not absolutely grave, nor of themselves causing serious fear, can nevertheless be grave in relation to the person experiencing the fear, and can instill serious fear, due to the quality and condition of the person experiencing the fear, and other circumstances. Indeed, fear in itself slight, such as reverential fear, in certain circumstances, can invalidate a marriage. This is a common doctrine, repeatedly admitted by the Sacred Congregation. This fear is conceived both towards parents, and towards others to whom honor is due, as Vecchiotti says in *De Matrim.*, c. III, p. 215. The evils to be feared are of many kinds, such as, for example, beatings, threats, a difficult and very troublesome cohabitation, the loss of an inheritance, or any other peril no less serious. These principles are universally accepted by Doctors, and it is not necessary to cite them. The

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terms themselves, or equivalent ones, can be seen in Sánchez, Clericato, Feye, S. Liguori, Lehmkuhl, and Ballerini, S.J., when they discuss force and fear. The conclusion cannot be expressed better than in the words of the last author (Theol. mor. vol. 6, p. 571): "Doctors observe that the seriousness of fear should often be permitted to be assessed by prudent judgment, and especially by that of a judge, and a judgment should be rendered, considering the circumstances and the quality of the person."

[*Latin ed. p. 296*]

296 In rebus Neapolitanis, cum persona, sive timore, sive metu incitata, et natura mala, – observamus: 2° Non semper requiritur gravitas aequaliter pro muliebri et pro viro; quia hic est fortior et constantior, sed mulier est debilior, fragilior et inconstantior; ergo, quod ad mulierem pertinet, timor, qui non est gravis pro viro, potest esse gravis. Hinc, alii, ut regulam hanc generalem efficiant, volunt, nomine viri, ibi intelligi etiam mulierem (Schmalz, lib. 4, tit. I, pag. 431). – 3° Malum, quod timetur, non solum debet esse grave, sed prudenter credi debet impendentem. Ultimo, notandum est, in hoc impedimento, metus, consensus semper supponitur; iura enim haec matrimonia non irritant ex praesumptione consensus ficti, sed irritant suppositum consensum verum. Consensus ergo verus et liber, sed ex metu datus, supponitur. Doctrina vera, optime, modo suo, exponitur a D. Thoma, 4 Disput. 29; quaest. 1, art. 3: « Quidam dicunt, quod si adest consensus, etiam coactus, interius est matrimonium quantum ad Deum, sed non quantum ad statum Ecclesiae, quae praesumit ibi non fuisse consensum internum, propter metum. Sed hoc nihil est; quia ecclesia non debet praesumere de aliquo peccato, quousque probetur. Peccavit autem si dixit consentire et non consentit. Unde ecclesia praesumit eum consensisse: sed iudicat illum consensum exstortum non esse sufficientem ad matrimonium. » Positis his principiis, quae in dubium revocari nequeunt, iam via patet ad discussionem validitatis huius matrimonii, D'Auria-Liguori, quae quaestio se resolvit in hanc: utrum Iustina Liguori, ea, in matrimonio contrahendo, immunitate a coactione frueretur, quam ius requirit ad consensum sufficientem ad matrimonium? Revera, in processu, dubium circa utrumque sponsum movetur; sed quantumvis rationes non desint pro parte viri, cum difficillima res sit, vim et coactionem gravem ostendere hominis 26 annorum, nulla sive mentis sive corporis infirmitate detenti, hanc quaestionis partem relinquendam potius existimavi, et rationibus in hoc sensu allatis uti tanquam adminiculis ad probationes quae ex parte Iustinae proferuntur.

[*Latin ed. p. 297*]

NEAPOLITANA 297. Regarding these questions, which are specifically directed towards Justina, I believe a response is necessary, always deferring to the better and more prudent judgment of the Most Reverend Fathers,

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and I offer this in a negative sense; for she was subjected to coercion, particularly from her uncle, Nicholas, which, considering all the circumstances, constituted a grave fear, and driven by this fear, she entered into the marriage reluctantly and with protestations. This is confirmed in the uncle's deposition. The words of the uncle corroborate the deposition of Justina, and this has also been confirmed by all those who testified in the case. It is undoubtedly the case that some coercion was exerted upon her, which is further strengthened by the testimony of the witnesses. There are witnesses, most respectable matrons, one of whom was formerly a companion of Justina in a certain institution, and the other is the mother of a friend of Justina; both of them knew the entire story. - Furthermore, Raphael Liguori, Justina's brother, overcome with emotion, testified that he had offered to renounce his share of the inheritance in favor of his sister, in order to free her from the marriage which she so abhorred; but this was to no avail. No compromise, other than the marriage, was acceptable to the uncle, in order to consider the honor of Justina and the decorum of the family; therefore, the marriage was celebrated. It is not necessary at this time to recount the testimonies of the other witnesses individually. The depositions of all are in agreement, so that any doubt concerning the fact of coercion is excluded. But further, the question arises as to whether this coercion was of a kind that constituted a grave fear? Certainly, I answer that it did, if all the circumstances are properly considered. We are dealing with a girl of 15 years of age, an age which, without a doubt, involves a notable development of the intellect, and in the south, even physical development; but what about the "character," as they say, that is, the fortitude and the vigor of spirit, to which young people of both sexes, at an unequal pace, attain with the passage of time? Daily and universal experience proves that girls of 15 and 16 years of age, and even those of more mature age, even if they are endowed with intellectual gifts, are often timid and fearful, and therefore can easily be dominated by older people, especially men connected to them, in matters concerning external actions of the will. This is true even in Anglia, where the system of education...

[*Latin ed. p. 298*]

298. The Neapolitan character, in some respects, indeed in a significant way, fosters a certain independence of spirit, which is rarely found among Southerners, and almost never when a young girl is raised from childhood in a school or monastery under a discipline akin to monasticism. Indeed, we see that Justina, upon leaving the school, retained her childish manners until her marriage; occupied with trifles and childish games, this is attested to by many witnesses – in particular, her uncle Nicholas. The same is affirmed and confirmed by the witnesses Sara Raho and Oommend, from Rome, President of the Court of Appeals. Therefore, either force or coercion was exerted upon the weak girl, in whom, considering her childish

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manners, one would vainly seek the fortitude that women often possess. Already unprepared, both by age and temperament, to resist pressure, Justina, from another perspective, and indeed through her own fault, fell into deep dejection when she was expelled from her only refuge after secret letters were discovered. Neither prayers nor tears availed anything. The decree of expulsion remained irrevocable, and she was forced to leave the school, not without shame: for the basis of the expulsion judgment was, namely, secret correspondence by letter with a young man, which the childish imagination certainly exaggerated. Indeed, the girl was pious and modest, of great sensibility, as we must infer from what is said about the vivacity of her intelligence. It is certain that the more lively the intellect, the more delicate the nervous system is in the young, who are therefore more easily susceptible to impressions of fear and dread. This kind of fear, stemming from Justina's difficult circumstances, by itself, does not favor the case, without a doubt, since it is intrinsic and has no relation to marriage, and I do not bring it up for that purpose. But justice requires that its effects on the girl be considered. Does she not become more depressed and abject? Does not that firmness of spirit, which can be feigned in a girl so childish, diminish, so that the pressure that would not affect another, in her case, takes on the true nature of force and coercion? Indeed, it is consistent with the doctrine of Doctors of Theology and of Law, that a judgment on the gravity of...

[*Latin ed. p. 299*]

In Naples, 299: Fear must be judged with prudence, for it is for the judges to estimate the force and efficacy of coercion, not in relation to a woman, so to speak, "typical," but taking into account the age, disposition, and character of each individual upon whom the fear is imposed. Therefore, it cannot be denied that the aforementioned circumstances are not to be disregarded, and indeed, they can form a valid argument in the case. Two propositions can be formed from the entire process, which, if true and proven, will completely justify the contention of Justina.

1. Before the negotiations began by her uncle, Justina never had a serious intention of marrying D'Auria, but at most, a certain childish vanity.

2. Her indifference towards him grew until it reached absolute repugnance, which was overcome only by constant coercion, not separated from threats, carried out by her uncle, Nicholas, to which, considering her age and disposition, she could not morally resist.

The first proposition is proven by the testimony of Justina; concerning which, it should be noted that, apart from the intrinsic indications of simplicity and sincerity that she exhibits, all witnesses in the case affirm Justina's piety and the veracity of her statements. While she was in this state of mind, estranged from any idea of marriage with D'Auria, partly due to a pre-existing improper relationship, and partly due to levity,

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perhaps even childish vanity, she resumed correspondence with him; but behold, the whole affair was revealed to the directresses of the college, causing great scandal to all. Furthermore, on the occasion of this same correspondence, Justina suffered a very serious physical ailment; for she was found alone, as previously narrated, deprived of her senses, bleeding, and so seriously injured that she was confined to bed for several days, after which she was ordered to be irrevocably expelled from the college! What, I pray, must have been the state of her mind towards D'Auria, the cause or occasions of these troubles? Experience teaches that women, and others who have a quasi-feminine constitution, that is, where nervous sensitivity dominates the mind, are more strongly moved, even against reason, if they are the cause of some injury to others.

[*Latin ed. p. 300*]

In Naples, the injuries were grievous; therefore, it is not surprising that the indifference of Justina towards D'Auria increased after the expulsion, and that soon after, a profound aversion and hostility arose, as indeed happened. Witnesses, however, testify under oath, and under the influence of threats, that all previous marriage agreements were completed, both with the municipal authorities and with the parish priest. Furthermore, D'Auria, compelled by a large and powerful family, entered into this arrangement, in which Nicholas played the principal part, since it was under his authority that Justina, having been humiliated and afflicted by the expulsion, remained for that entire time (approximately one month). What effect could have been produced in her mind when she saw a man of 26 years of age yielding to the violence of his uncle? There could be no other effect than grave fear and despair regarding her condition. Indeed, for both theologians and canonists, it is most important that matrimonial consent be fully deliberate and spontaneous, both because of the voluntary union of Christ with the Church, and especially in order to avoid the sad and unhappy consequences that often result from forced marriages. Moreover, a greater and more perfect voluntary consent is required for marriage than for other civil contracts, since these are of lesser importance and can be dissolved by the will of the contracting parties or by the authority of the law. Let us suppose that Justina, under the same circumstances, entered into a contract whereby her own inheritance would be alienated from her, either permanently or temporarily; would such a contract be valid before a civil or ecclesiastical tribunal? By no means! And rightly so, because such coercion vitiates any contract entered into under it. This poor girl enjoyed absolutely no freedom! Expelled from the college, abandoned by her parents. Only one person offered her temporary shelter, but under the condition that she marry D'Auria within a specified time (15 days). From the beginning, Nicholas declared his intention; he allowed no delay, nor did he permit any objections. He even managed to impose his will upon a man who was

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reluctant; what then of a girl of 15 years, ignorant of life, raised from infancy in a college, and therefore more timid and fearful than others?

[*Latin ed. p. 301*]

NEAPOLITANA 301 Among a large number of relatives, only one, Brother Raphael, showed true love for the poor girl. In order to rescue her from that detestable marriage, he spontaneously offered to renounce the inheritance that would have come to him from his mother's side; but even in this, the uncles prevailed, for they were in charge of the administration of these assets; and they did not accept his proposal; and they refused to take Justin back into the house, except under the condition that she would contract marriage within a short time. This is also evident from the testimony of almost all the witnesses in the case. Therefore, Justin feared being expelled from her uncles' house, and rightly so, for everyone told her that this was an inevitable consequence, unless she married D'Auria. It is a common teaching that even a reverential fear, although in itself mild, is sufficient to invalidate a marriage, when it is joined with threats, importunate requests, or a serious fear of some evil; such as death, mutilation, loss of property or reputation, and rape. Some also teach (Sánchez, De spons. 6, 17) that such fear, if it is the principal cause, dissolves the contract, even without threats or coercion, because of the absolute freedom that marriage requires. The Rule of Law states: "He does not seem to consent who obeys the command of a father or master." In this case, there was certainly a reverential fear present, indeed, more than "reverential," for the will and power of Nicholas caused the will of a man of 26 years to be bound, just as the will of a child would be bound; how could Justin, 15 years old, living in Nicholas's house, resist, when he imposed the marriage with the author of the disgrace, and therefore the only possible remedy, through imperious words and threats of expulsion? Certainly, he was able to carry out his threats, at least in the opinion of the girl; and he certainly held power over her, and could undoubtedly provide for her honor and sustenance by other means; except that, being preoccupied with the honor of the family, he chose, from the beginning, one course of action, and exerted all his will to ensure that both, D'Auria and Justin, would embrace that marriage.

[*Latin ed. p. 302*]

302 Naples. Therefore, it was a true and serious coercion; and although stronger arguments are lacking from the testimony of Justina, they deserve absolute credence, both because of the religion and sincerity of herself, which all witnesses praise, and because they are confirmed by other testimonies from entirely independent sources. More of this kind could be added, but, if I am not mistaken, these are sufficient. Justina's resistance had grown so great that, whatever preparations were made for the mar-

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riage which horrified her, she sought to avoid it. But her own will was dominated by the stronger will of her uncle, and, fearing expulsion from the only certain refuge she had, she submitted to her miserable fate. Therefore, the preceding events show a marriage, not of love, but of coercion, to which no young girl of fifteen years could have resisted. Let us now consider the subsequent events. The matter can be resolved in a few words. It is enough to hear Justina, whose words, moreover, receive further full confirmation from the testimony of D'Auria and other witnesses. First of all, from her testimony, it becomes clear the utter simplicity, truly childlike, and total ignorance of what marriage is. No less clearly, it appears that there was no love for the man. She fled from his embraces, wishing to be as a sister, and only after two days of conflict did she consent to the marital union. This is confirmed by D'Auria himself. Therefore, from the subsequent events, as from the preceding ones, it must be inferred that this girl, truly a child, was truly coerced by a reverential fear of her powerful uncle, combined with threats of expulsion from the only refuge she had from immorality. Such fear, in similar circumstances and according to all those who remove impediments, constitutes a grave injury, both to liberty and to the necessary consent for marriage.

NOTES OF THE DEFENDER OF THE MARRIAGE, BY OFFICE. In Naples, before the parish priest of the church of *Matris Dei*, the marriage was lawfully contracted on July 31, 1876, between the fifteen-year-old girl, Justina Liguori, and the young man, Franciscus D'Auria, aged 25 years. They then spent a brief period in the pleasant plains of the Surrentine countryside, which fostered their conjugal spirit, and...

[*Latin ed. p. 303*]

In Naples, they had three hundred and three children, and maintained the custom of living together until September 25, 1879, when Justina separated from her husband, never returning to him. She persevered in this arrangement, refusing all reconciliation with her husband, and only meeting with him in matters concerning the civil court proceedings regarding the separation. Subsequently, she found another lover some time later, to whom she shamefully clung, and who wished to marry her legitimately. Therefore, she petitioned the Metropolitan court in 1887, demanding that her marriage to Francis D'Auria be declared null and void, alleging that the marriage contract, not only lacked sufficient discretion or knowledge of the marital status, but also that her consent was obtained through coercion and fear, unjustly forcing her into the marriage. Francis, who, contrary to Justina's petition, also claimed to have been forced into the aforementioned marriage out of fear, and the aforementioned court, after conducting an investigation into all these matters, reached the following judgment on August 28, 1890: "The marriage entered into on July 31, 1876, between Francis D'Auria and Justina Liguori is declared invalid, void, and null, due to a

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lack of consent, which, it is probable, was not freely given by either spouse, and certainly was not freely given by the woman Liguori, but was obtained through coercion and grave fear, unjustly forcing her to consent to the marriage." This judgment was further supported by two eminent consultants appointed to examine this matter for the Sacred Congregation. However, after diligently scrutinizing the process documents for the purpose of my office, I did not find arguments sufficiently valid and conclusive to persuade me. First of all, the lack of discretion or knowledge of the marital status, so vehemently proclaimed by the plaintiff, was rightly refuted by the most learned theological consultants, as it did not correspond to the truth, and was otherwise not considered of any value by the Neapolitan court itself. From several arguments presented by the plaintiff to assert this lack of discretion,

[*Latin ed. p. 304*]

304 In Naples, the situation is manifestly clear. It suffices to recall that, as she herself states, for at least three or four years before the marriage, she was aware of the most disgraceful life of her father. Furthermore, there is no reason to dwell on the alleged fear that was supposedly instilled in the man, since probability has no bearing on our case, and this alleged fear would not have been instilled in a man who was not unwilling to marry, but rather who had been desiring and eagerly seeking marriage for almost two years, nor could it be considered unjust, since he was precisely the cause of the damage that Justina suffered through her expulsion from the college of St. Marcellinus, where she was enjoying secure and free lodging. On the other hand, I see no solid or legal basis for the alleged fear that was instilled in Justina in order to extort her consent to the marriage. It must be remembered that this marriage was proposed to Justina from the beginning, at least in June of 1875, and that it did not displease her, as she herself confesses, and as the subsequent correspondence shows. It must also be remembered that, upon learning from the director of the college about the clandestine correspondence and the penalty of expulsion, Justina turned to her uncle Nicholas in Campobasso, and implored his help, as she herself recounts. Coherently with these events, the marriage negotiations proceeded not for 15 days, but for over two months, without anything having disturbed the minds of the uncle and niece in the meantime: there was no cruelty, no threats, no quarrels, as is often the case in similar situations. And although the uncle himself asserts that the niece lacked discretion and freedom, he nevertheless admits that he did not intend to impose his will upon her. And furthermore, this alleged deprivation of freedom can only be understood, as Alphonsina Navarro Ramo explains, in this way: Justina, at the age of 15, was unable to comprehend the nature of the marriage to which she was being led; that is, due to the lack of fortune and family, since

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she could not rely on the stability of her father's family or that of her uncles.

[*Latin ed. p. 305*]

NEAPOLITANA 305 Whatever may be the case concerning the distressing circumstances of Iustina, it is nonetheless true that her testimony is of no avail until she demonstrates, and clearly states, that the fear she experienced was caused by a free and indeed heartfelt consent to marriage. Let Sánchez, who is certainly foremost in this matter, be heard, in his work *De Matrimonio*, book 4, disputation 12, numbers 3 and following: "In this matter, there is a CERTAIN CONCLUSIO CERTISSIMA AMONG ALL, namely, that whenever fear is not induced BY EXTORsive means, but arises from a natural or free cause, HOWEVER GRAVE it may be, it DOES NOT INVALIDATE the marriage. This is proven... because that which is involuntary in the marriage is not intended by the one who instilled the fear, but merely has an opportunity arising from the weakness of the other party. From this conclusion, it follows that a marriage contracted under duress in prison, if the duress is NOT FOR THE PURPOSE OF EXTORTING the marriage, IS VALID. Because, although the fear of imprisonment is grave, and therefore renders contracts made while incarcerated null and void—and consequently, marriage should also be null: YET, SINCE THAT FEAR IS NOT INFLICTED FOR THE SAKE OF EXTORTING THE MARRIAGE, THE MARRIAGE IS VALID." Sánchez continues: "Fifthly, it follows that the marriage is valid, even if, condemned to death, he takes a concubine in order to escape death, according to the custom or law of some regions. Because that fear does not tend TOWARD THE MARRIAGE ITSELF, but the condemned person, of his own accord, chooses that means of escaping his punishment... Sixthly, it follows that the same must be said, even if he himself does not offer marriage to the condemned person, but another promises him immunity from that punishment if he takes a certain woman. Because then, no fear is instilled FOR THE PURPOSE OF EXTORTING THE MARRIAGE, but fear arising from another source is removed by that condition. Indeed, if the judge, having captured him and threatening him with death, promises him a reprieve if he takes the judge's daughter, or another woman, otherwise threatening him with just death, THE MARRIAGE IS VALID. Because the fear is not instilled FOR THE SAKE OF ENTERING INTO MARRIAGE, but rather, a fear already present is removed, and that means of escaping danger is offered." Acts, Volume XXVII, page CCCXVII, 20.

[*Latin ed. p. 306*]

306 In Neapoli, clarissimus Sánchez refutavit eos doctores qui videntur doctrinam praeactam "limitare, cum si captus esset iuste, et morsque iuste in f erenda esset:" et docet sine ambiguitate, timorem ex causa sive iusta sive INIUSTA incussum, valorem matrimonii minime afficere, si incutiens

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animo non intendat consensum in matrimonium per hoc extorquere. Addebat enim: "Existimo, parum referre ad matrimonii huius valorem, sive iuste sive INIUSTE damnatus sit. Quia hoc matrimonium EX EO non redditur irritum ob hunc timorem, QUIA METUS NON INIICITUR AD ILLUD EXTORQUENDUM, sed metus iam conceptus aufertur: ergo impertinens est, an metus ille conceptus fuerit ex iusta CAUSA, necne. SOLUS enim metus, iniuste illatus AD EXTORQUENDUM MATRIMONIUM, illud dirimit." His animadversis propositum fuit diluendum dubium, an sententia Curiae ecclesiasticae Neapolitanae confirmanda vel infirmanda sit in casu. RESOLUTIO. Sacra Congregatio, die 16 Iunii 1894, re disceptata, censuit respondere: Non constare de nullitate matrimonii. Ex QUIBUS COLLIGITUR: I. Solummodo timorem iniuste illatum, ad extorquendum matrimonium, valere illud dirimere. II. Quoties enim timor non incutitur ad extorquendum matrimonium, sive a causa libera, sive a causa naturali, matrimonium non irritatur: et ideo validum esset matrimonium contractum a detruso in carcere, qui carceri praeferret matrimonium, dummodo detrusus non fuisset causa matrimonii ineundi. III. Hoc enim in casu, involuntarium quod in dicto matrimonio invenitur, occasionem habet a propria nequitia, non a causa extrinseca; quia damnatus ad carcerem sponte sua eligit hoc evadendi medium, per quem metus iam conceptus aufertur. IV. Avunculum in themate videri non habuisse intentionem vim inferendi nepti, quamvis satageret ut desideratum matrimonium miretur; ideoque septem praetulisse matrimonium angustiis vitae, quas improbitas vafrae feminae Valente dicteriis adauxit.

[*Latin ed. p. 307*]

307 FROM THE DECREE OF THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF HAVANA, CONCERNING THE SUBMISSION OF ACCOUNTS, dated August 24, 1894. SUMMARY OF THE CASE. The priest Anacletus Redondo and Marin, parish priest of the Blessed Virgin of Montserrat in the city of Havana, and also a collector or administrator of chaplaincies for several years, was, in the year 1891, summoned to the Havana Curia by a certain chaplain, Emmanuele Moreion and Rodríguez, to render an account of 20 chaplaincies which he had entrusted to the aforementioned collector for administration. Having received a mandate from the Curia, the priest Redondo complied; however, in the rendering of the account, matters did not proceed peacefully, since there were 400 gold coins (2000 livres) in the section relating to receipts and expenditures, which the chaplain Moreion denied having spent; on the contrary, the priest Redondo stated that they had been spent to obtain certificates justifying the payment of taxes for the 20 chaplaincies. The matter was referred to the Havana Curia, which, on January 11, 1892, having considered that the aforementioned sum had not been paid by the priest Redondo, or, at the very least, without due

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authorization, and invoking chapter 11, session 22 of the Council of Trent (De Ref.), against those who usurp ecclesiastical goods, condemned the aforementioned priest to restitution of the disputed sum, and declared him excommunicated and unfit for any ecclesiastical office, removing him from the parish and from the administration of the chaplaincies and offerings, and also imposing upon him the costs of the legal proceedings. From this sentence, the priest Redondo appealed to the Metropolitan Curia of Saint James of Cuba, which, on October 14, 1892, completely overturned the appealed sentence, with full legal justification for the appellant.

[*Latin ed. p. 308*]

308 HABANA. Concerning the restoration of all damages and expenses. The priest Moreion and the Curia of Havana, not agreeing with this opinion, immediately declared that they would appeal to the Holy See, and subsidiarily to the Episcopal tribunal of Puerto Rico. This appeal was vigorously contested by the Metropolitan Curia and the priest Redondo, on account of the Brief of Gregory XIII, dated 1578, by which Philip II, King of Spain, granted a privilege, that all ecclesiastical causes in the Spanish overseas territories should be united there in the last instance. On the contrary, the priest Moreion and the Curia of Havana interpreted the Brief in such a way that it was not understood to exclude the appeal to the Holy See. In the meantime, the acts of the case reached the Sacred Congregation, which, after a preliminary decree of August 5th, ordering that, pending the litigation, the priest Redondo be restored to the celebration of Mass, ordered that the matter be discussed in a plenary session of the Most Eminent and Reverend Fathers.

Synopsis of the Argument: The advocate for Redondo, having previously stated that the priest Redondo was most deserving in the diocese, according to the testimony of the Ordinary himself, first argues against the illegal form of the judgment, since the cause was introduced without a formal petition, but rather on a simple request from the priest Moreion, demanding the client of Redondo to render an account of 20 chaplaincies and to pay 400 gold coins, commonly called pesos, and that this was done, disregarding the fundamental rules of law: moreover, the judgment was not only unjust and arbitrary, but also inspired by hatred of one party, which can be clearly seen from the manner in which the execution of the judgment was demanded by the judging Curia. Indeed, on the very day that the judgment was issued, the judge presented himself at the Collector's office, and then at the parish house, accompanied by his Curia, with a tribune and ten soldiers for the guarding of access, ordering Redondo, who was lying in his parish residence due to illness, to leave within a peremptory term of three days, although, according to the testimony of three physicians, this was impossible: hence, the advocate protests against the violation of justice and humanity, and concludes by

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stating that, from what has been narrated, [follows] THE DEFENSE OF THE PRIEST REDONDO.

[*Latin ed. p. 309*]

HABANELN. 309 Furthermore, from the events that followed due to the interposed appeal by the Reverend Redondo to the Metropolitan Tribunal, while on one hand the humility and patience of this [person] are evident, on the other hand, hatred and persecution are clearly apparent from the Habanan Curia. Then, the Advocate, approaching the merits of the case, divides his argument into two parts; in the first, he argues that the priest Moreion was wrongly appealed to by the Metropolitan Tribunal to the Holy See, contrary to the established disposition of the aforementioned Gregorian Brief. Indeed, through this, a new order of judgments is introduced under penalty of nullity, establishing in the overseas territories under the jurisdiction of Spain that if the first sentence of the Bishop is confirmed by the Metropolitan Tribunal, or if the first judgment of the Metropolitan is confirmed by the sentence of a neighboring Bishop to whom appeal is made, these sentences shall have the force of res judicata; but if the two sentences are different, then, upon appeal made to a neighboring Bishop, these sentences will acquire the same force of res judicata as those that are in conformity: therefore, the Advocate continues, the priest Moreion ought to have appealed either to another Metropolitan or to another neighboring Bishop of the province; and since he did not do so, his appeal, as it is contrary to the aforementioned Brief, is vitiated by nullity. Moreover, he argues that the priest Moreion did not do anything to the contrary in his appeal to the Holy See, but declared that he was also invoking the Episcopal Tribunal of Puerto Rico, because, according to established principles of law, an appeal must be pure, simple, and without condition. Nor, he continues, is it valid to object that the aforementioned Brief no longer has its force in these times, for recently a case was discussed before the Sacred Congregation of the Council of Spain and the island of Cuba – of jurisdiction – (1): the Advocate presents a case that is summarized as follows. A certain priest from Salvador had appealed to the Matritensem Tribunal against the sentence of the General Vicar of Saint Christopher of (1) This case was recounted in its entirety in Volume 24, pages 77 and following.

[*Latin ed. p. 310*]

340. HABANEN. Habana, who had condemned him to ten days of spiritual penance, appealed to the Rota. The Rota accepted the appeal, notwithstanding the objection of incompetence raised by the Vicar General, and, revoking the penalty imposed, delegated the matter to the Archbishop of St. James of Cuba. The Vicar appealed to the Holy See, raising the question: Whether the sentence of the Rota of Matritensis is null and void due to a lack of competence in this case. The Sacred Congregation, on March

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5, 1892, with unanimous votes, responded: Affirmative, and furthermore. Subsequently, the advocate, proceeding to the second part of his argument, contended that the sentence of the Metropolitan of Cuba should be entirely confirmed; and to achieve this, he argued that the judgment of the Tribunal of Habana had been revoked by law and by merit, since it was null, either in form or in substance. Regarding the former, in addition to the defects mentioned above, the advocate recalled that all proceedings had been based solely on the judge's arbitrary decision; that there had been no prescribed and notified deadlines for presenting evidence or for reaching a conclusion; that no witnesses were accepted, except for the brother of the priest Moreion; and that the sentence, after only two minutes from its notification, was personally assigned for execution by the judge himself, as previously related. Regarding the second point, namely the nullity of the sentence of Habana in substance, the advocate stated the following. The priest Redondo was accused of having placed in the passive account 400 pesos, because he had either not paid this sum, or had paid it without proper authorization. He himself appealed to the agreement subsequently reached between himself and the procurator of the priest Moreion, regarding the transfer of this sum to John Marin, in order to obtain justifications for the taxes paid to the treasury, and thus prevent the sequestration of the chaplain's revenues. This agreement, although not written, could be proven by witnesses; nevertheless, the judge of Habana only accepted the testimony of the brother of the priest Moreion. But, let us assume, the advocate continues, that this credit exists; in the records of the administration of the chaplaincies, there is a note from which it results that the priest Redondo is a creditor against Moreion in the sum of 596 pesos and 42 1/2, from which, if we subtract...

[*Latin ed. p. 311*]

Havana. 311. There are 400 pesos in dispute; the priest Redondo is still a creditor against Moreion in the sum of 196.42 1/2 pesos. Furthermore, the Advocate contends that the contested sentence lacks all legal effect, because the penalties imposed are not the effect and consequence of a criminal judgment, but only of a private civil judgment, which, indeed, should be considered to be the judgment promoted by the plaintiff Moreion against his special mandatary for the rendering of accounts of his administration. But even if the judgment were to be considered criminal, the Advocate states that it cannot be considered in any way, because all substantial elements are lacking, such as ecclesiastical authority, the Fiscal General, the hearing of the case, and the appointment of a defender; moreover, the imposed excommunication cannot be upheld, because it did not precede a triple warning, and because it lacks its foundation, namely, the supposed usurpation of ecclesiastical goods, for the priest Redondo is not an uselper, as has been seen, but rather should be considered as a creditor towards

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Moreion; moreover, the other penalties cannot be upheld, because in imposing them, all the rules of law were disregarded, among which is the existence of a special Commission, which was absolutely necessary for the court of first instance to judge the case; hence, the Advocate concludes in favor of the confirmation of the sentence of the Metropolitan Tribunal. On the contrary, the priest Moreion did not choose any Advocate, but merely transmitted to the Holy Congregation the judicial acts that followed in the court of Havana and the Metropolitan Tribunal, to which he added some observations on law and fact regarding the Considering and Resulting of the Metropolitan sentence, as well as an authentic attestation from the Vicar General of Havana concerning the current state of the dispute, issued at the request of Moreion himself. After considering these matters, and with the observations of the Vicar General of Havana before us, dated September 29, 1893, the following should be considered.

[*Latin ed. p. 312*]

312 Havana. Doubts I. Whether the place name is suitable in this case. And to what extent. Affirmative. II. Whether and how the sentence of the Metropolitan Curia of St. James of Cuba in this case should be confirmed or revoked. RESOLUTION. The Sacred Congregation of Bishops and Regular Canons, after mature deliberation on August 24, 1894, resolved the proposed doubts as follows: To I. Affirmative. To II. Considering the substantial defects in the form of the judgment in Havana, the sentence of the Metropolitan Curia is to be confirmed; however, after further examination of the case on its merits, the priest Redondo is to be held liable for the sum of four hundred gold coins; nevertheless, he has not incurred excommunication nor the penalties established by the Holy Council of Trent, in chapter XI, session 22, concerning Reform, and therefore he is to be restored to his parish and to all other benefices and offices, with the revenues and fruits produced or which could have been produced from the date of his deprivation.

FROM THE SACRED CONGREGATION FOR RITES. Decree of Confirmation of the worship rendered from time immemorial to the Servant of God, Idesbald, the third Abbot of Down and Connor of the Cistercian Order. Idesbald was born in Flanders to Christian parents in the year one thousand and one hundred. From his earliest years, he showed remarkable qualities, since, completely averse to the pleasures of the world, which young people are so often eager to pursue, he already excelled in humility, inflamed only by the love of God, his mind being sweetly absorbed in Him, and he constantly thought of God. Therefore, desiring to be united with God and to serve Him alone, as soon as it was permitted by his age, he was ordained to the priesthood: and it was Idesbald's delight to restore sinners to grace, to console the sorrowful, to help those who were doubtful in their counsel, and indeed, to make the souls of his brothers more easily receptive,

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and to provide for their bodily needs. For this reason, he renounced the riches, with which...

[*Latin ed. p. 313*]

From the Sacred Canons, chapter 313, it is most clearly demonstrated that he was exceedingly generous to the poor, retaining for himself only what was necessary for his sustenance. Called to the court of Terry, Count of Flanders, and appointed as a counselor to the young Prince, he provided excellent examples of integrity in counsel and conduct, both to the courtiers and to the servants, inspiring them to live a life more fitting for a monastery than for the world. However, inflamed by a strong desire for solitude, Idesbald abandoned the world and the court, and retired to the Cîteaux Monastery of Down and Connor. There, with constant dedication to perfection, and with humility and the gentlest of dispositions, he won the hearts of all his brothers. Chosen to serve as a singer, because he possessed a melodious voice, he performed this office with such diligence that, devoted solely to divine praise, he neglected even those things necessary for life. The virtues and the saintly life of this outstanding man were so admired by his brethren that, with a unanimous vote, they elected Idesbald as Abbot of the Monastery of Down and Connor. In this office, he displayed such prudence and all-embracing virtue that he quickly became an excellent example of monastic life, and he was rightly revered by his subjects as a most loving father. After serving as Abbot for twelve years, distinguished by his merits and sanctity, he was struck by a brief illness, and peacefully fell asleep in the Lord on the eighth day of April, in the year one thousand six hundred and sixty-seven. To the church, where his body was exposed, a vast multitude of citizens from all walks of life flocked; some proclaimed Saint Idesbald, others piously tore off pieces of his garments or other objects belonging to the deceased, and many implored him as an intercessor with God, so that they might more easily attain what they requested. His fame for sanctity, born from his virtues, never diminished; and it has grown so much, both among the common people and among the most learned men, that, after the passage of so many centuries, it continues to spread daily, becoming ever stronger and more widespread. Hence, a chapel has been erected to God in honor of Blessed Idesbald, and a feast day is celebrated each year in the church where his sacred relics are kept, with an immense multitude of people present; hence, frequent gatherings of the people at his tomb, even from neighboring regions, and the veneration for him has continued unbroken from his blessed death to this very day. Therefore, at the urgent request of the Reverend Father Torquato Armellini, of the Society of Jesus, the promoter of the cause, a process regarding the unforgettable ecclesiastical veneration paid to Idesbald has been initiated by the Bishop

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of Bru-

[*Latin ed. p. 314*]

314. The Sacred Congregation of Rites having been convened, and a favorable opinion having been rendered, it now happened that, through the Postulator of the aforementioned cause, as well as through the Most Reverend Bishop of Bruges, and the entire Diocese of that city, a certain doubt was proposed for discussion by me, the undersigned Cardinal, Prefect of the Sacred Congregation of Rites, in the ordinary meetings of the Sacred Congregation itself, on the date indicated, in Vatican. The doubt in question was: "Whether the aforementioned decision of the Most Reverend Bishop of Bruges, concerning the cult rendered from time immemorial to the Servant of God Idesbald, or concerning the exception made from the decrees of Pope Urban VIII, should be confirmed, in a just and effective manner, with regard to the matter in question?" The Most Reverend Fathers entrusted with the preservation of the sacred rites, having carefully considered all matters, and having heard the voice and the written opinion of the Reverend Father Dominick Augustine Caprara, Promoter of the Faith, decided to respond: "Affirmatively, that is, the decision should be confirmed." On July 10, 1894. Afterwards, a report was made by myself, the undersigned Cardinal, to His Holiness, our Most Holy Father Leo XIII. His Holiness approved and confirmed the decree of the Sacred Congregation on the 23rd day of the same month and year.

C. CARD. ALOISI-MASELLA, Prefect.

L. & S. ALOISIUS, Secretary.

FROM THE HOLY CONGREGATION OF THE RITE AND THE UNIVERSAL INQUISITION:

Concerning spiritual kinship, when one is the godfather of several children of the same person.

Most Blessed Father, the Bishop of Ruthenia and Vabres, Cardinal Bourret, requests permission to present this matter to the Holy See.

It is found among us that someone can be the godfather, in the sacrament of Confirmation, of two or more children of the same person; and the same can happen, though more rarely, in Baptism.

Two, or more, impediments to spiritual kinship between the godfather and the mother of these children exist, and all of these...

[*Latin ed. p. 315*]

From the Sacred Congregation, number 315, it is stated that when requesting a dispensation, it must be expressed [whether] there are impediments, as Sánchez affirms, 1, VIII, disputation 24, numbers 4 and 5; the Salmanticenses, *De Matrimonio*, chapter 14, numbers 69 and 51; St. Ligo-

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rius, book 6, number 1138; and others. And they offer the following proofs: 1. The causes are distinct, or even different, namely, more sacraments and more children. Therefore, the effects or impediments are also different. 2. He who has relations with two individuals who are within the second degree of consanguinity with the bride, has a double impediment of affinity with her. Thus, here, he has touched two of her sons in confirmation, and is therefore spiritually joined to them in a double manner. 3. He certainly has a spiritual relationship with each of the children; therefore, also with their mother, from two different and varied grounds. 4. These multiple impediments must be declared when requesting a dispensation; for they make the impediment greater, and require a more serious reason for granting a dispensation. Our modern writers acknowledge that there are indeed two impediments of spiritual kinship, and that these must be declared in the petition for a dispensation, if one was the godfather of the son of the other, and the latter, in turn, was the godmother of the former's daughter; likewise, if one has held the same son from the sacred font and in confirmation. Some, however, deny that there are two or more impediments, if one has held two or more children of the other in baptism, or in confirmation; or at least, they affirm that only one impediment must be declared at that time, although they do not give a reason for this. I have not found any decree on this matter from the Sacred Congregations. Therefore, I humbly prostrate myself before Your Eminence, and I request a response from the Holy See regarding the following: 1. Does he who has held from the sacred font, or touched in confirmation, two or more sons of the same mother, have with her as many impediments of spiritual kinship as he has touched of her sons in this way? 2. Are all these impediments to be stated in the petition, so that the dispensation may be valid? Given in Rodez, on the 17th of February, 1894. Your Eminence's most devoted son and creature.

To the Most Reverend Lord, my Observant.

In the letters of the 17th of February, Your Eminence inquired: 1. Does he who has held from the sacred font or touched in confirmation two or more sons of the same mother, have with her as many impediments of spiritual kinship as he has touched of her sons in this way?

[*Latin ed. p. 316*]

316 FROM THE SACRED CONGREGATION OF THE INQUISITION, 2nd Part: Are all these impediments to be stated in the petition for dispensation, so that the dispensation may be valid? After discussion in the General Congregation held on the fourth day of the week, March 7th of this year, the Most Eminent Cardinals, together with the General Inquisitors, including myself, decided that: If anyone holds several children of the same person in the same sacrament, the spiritual relationship is not increased, and consequently, it is not necessary for the validity of the dispensation that this circumstance be expressed in the petition. Meanwhile, those who

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are imposed..., etc. Rome, April 29, 1894. R. CARD. MONACO. DECREE concerning the visionary Mathilde Marchat and her companions and supporters from Loigny, in the Diocese of Chartres, in France. Most Illustrious and Reverend Lord, Not once, but repeatedly, Your Eminence has sent letters to this Supreme Congregation concerning the visionary Mathilde Marchat and her companions and supporters; and after these matters were presented in the General Congregation held on the fourth day of the week, June 17th, the Most Eminent Cardinals, together with the General Inquisitors, including myself, issued the following Decree: To the women about whom action has been taken up to this point, namely, Mathilde Marchat and all her companions, the Reverend Bishop of Chartres shall announce that, unless they comply with the decrees of the Holy See within one month, by simply submitting themselves, they will, by that very act, incur excommunication, reserved to the Supreme Pontiff. Those who adhere to them, favor them, provide assistance, or cooperate in any way, also incur the same excommunication, with absolution reserved to the Supreme Pontiff. This should be made especially clear to the woman named Trouillet, and she should also be informed to recall, if possible, the donations made to those women and to the alleged community, and to abstain from making any further donations in the future. The same warning, concerning the incurrence of excommunication, with its termination reserved to the Supreme Pontiff, should also be given to the Lord.

[*Latin ed. p. 317*]

FROM THE SACRED CONGREGATION 317: Jordan, through the Most Reverend Archbishop of Lyons, to whom it should be written separately. (This order of the Most Eminent Fathers has already been entrusted for execution.) The same excommunication is incurred by priests who minister, adhere, favor, and in any way cooperate, with absolution reserved to the Supreme Pontiff. The same excommunication is incurred in the case of recurrence by priests who approach the house in question, because of the already imposed suspension, with absolution reserved to the Supreme Pontiff for both censures. This decree shall not only be notified as above, but also shall be made public by the Most Reverend Bishop of Chartres, affixed by edict to the doors of the parish of Loigny. Finally, the Decree of condemnation, already issued, shall again be affixed to the doors of the same church, and this extends by the authority of the Holy See to all volumes of the Annals of Loigny previously published, and to any other printed publications concerning matters of Loigny previously published. As it is my duty to inform Your Eminence, I pray that the Lord may grant you all that is good and happy. To Your Eminence, in Rome, on the 4th of July,

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1894. Your Brother, L.-M. CARD. PAROCCHI To the Bishop of Chartres.

[*Latin ed. p. 318*]

318 APPENDIX III. EXHIBENS ACTA SEDIS APOST. ; QUAE AUT IAMDIU EXARATA SUNT AUT QUAE TEMPESTIVO LATUERUNT EPHEMERIDUM MODERATOREM. -h^v^i- S. C. S. Officii 31 Martii 1852. - Vic. Ap.- Hunan Dubia quoad nonnulla opera, quae suspicantur superstitiosa 1. An liceat comitari processionem draconis, explodere tormenta, eo transeunte, dare candelas pro draconis laterna,. vinum et pecuniam pro hac superstitione. 2. An liceat christianis conducere domum cum obligatione deferendi vel per se vel per alium laternam in processione cum dracone. 3. An liceat saltem aliquid contribuere cum protestatione dicendo: hoc est non pro dracone sed pro te qui colligis distributiones. 4. An occasione defuncti liceat, dum occiditur sus, ut paretur convivium, facere explosiones. 5. An liceat filiis et nepotibus comitando cadaver patris et matris telae albae longum frustum deferre ad ostendendum esse posteros qui possint vocare bonzios ad rumpendum infernum. R. Ad 1. et 2. Non licere . Ad 3. Non licere et Decretum fer. V. 1 6 . Novembris 1 7 6 9 ut sequitur: Decretum: « Quaeritur an sit licitum contribuere candelas pro draconis laterna, vinum et pecuniam, et explodere tormenta pro hac superstitione. — Respondetur : In proposito casu non licere . Ad 4. Negative. Ad 5. Non licere. Ex Constit. Inter omnigenas Bened. PP. XIV. 2 Febr. 1744. De celebratione nuptiarum apud Mahumetanos In celebratione nuptiarum observentur tempora ab Ecclesia catholica praescripta. Quod si intra vetitos dies mahumetani suas nuptias celebrantes, aliquem ex fidelibus officii causa invitaverint, quoniam Ecclesiae praecepta ad eos qui foris sunt minime pertinent, non prohibentur catholici Serviae, christianam modestiam secum ferentes, illis.

318 APPENDIX III. EXHIBITING THE ACTS OF THE APOSTOLIC SEE; WHICH HAVE EITHER ALREADY BEEN PUBLISHED OR WHICH HAVE BEEN TIMELY COMMUNICATED TO THE EDITOR OF THE PERIODICAL. -h^v^i- S. C. S. Office, March 31, 1852. - Vic. Ap.- Hunan. Doubts concerning certain practices suspected of being superstitious. 1. Is it permissible to accompany a dragon procession, to set off fireworks as it passes, to offer candles for the dragon's lantern, and to give wine and money for this superstition? 2. Is it permissible for Christians to escort someone home with the obligation of carrying, either personally or by another, a lantern in the procession with the dragon? 3. Is it permissible to contribute something, even with the protestation that it is not for the dragon, but for the one who collects the contributions? 4. On the occasion of a death, is it permissible, while a pig is being slaughtered for a feast, to set off fireworks? 5. Is it permissible for the sons and grandsons, accompanying the body of their father and mother, to carry a long white cloth to demonstrate that they are those who can call upon the good spirits

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to destroy hell?

R. To 1. and 2. It is not permissible. To 3. It is not permissible, and the following decree is cited from Decree fer. V. 1 6. November 1 7 6 9: Decree: "It is asked whether it is permissible to contribute candles for the dragon's lantern, wine, and money, and to set off fireworks for this superstition. — It is answered: In the aforementioned case, it is not permissible." To 4. Negative. To 5. It is not permissible. From the Constitution "Inter omnigenas" of Pope Benedict XIV, February 2, 1744, concerning the celebration of marriages among Mahometans: In the celebration of marriages, the times prescribed by the Catholic Church should be observed. If Mahometans celebrating their marriages within prohibited days invite a member of the faithful for official reasons, since the Church's precepts apply very little to those who are outside [the Church], Catholics of Serviae, behaving with Christian modesty, are not prohibited from being with them.

[*Latin ed. p. 319*]

APPENDIX III. 319, provided that it can be done without offending the Creator, and without causing offense to the faithful and to the Church of God; and that in the marriages of Turks, no invocation of Mahomet be made, and that no superstitious rites intervene, to which one must join and consent, either with words or deeds. However, if those of the faith should strive to avoid such associations with the unfaithful and such profane gatherings as much as possible, they will certainly avoid many dangers to their souls. S. C. de Prop. Fide. - C. P. pro Sin. 2 Iulii 1827 - Vic. Ap. Siam. Doubts concerning superstitious practices.

1. Sometimes, a king, prince, or prefect becomes a *bonzii* (Buddhist monk); during the time when they wear the garment of the *bonzii*, can Christians prostrate themselves before them, and greet them according to the custom of the kingdom, without making any protest, especially if it cannot be avoided? That yellow garment is considered a divine garment, and the *bonzii* are called gods. What if the doctors themselves are *bonzii*? For they cannot be approached without a prior greeting. What if relatives, or even a parent, are *bonzii*? Indeed, it would not be salutary to greet relatives or elders, for it would be a great cause of accusation against the Christian religion.

2. After the death of the king, the people of Siam build a large pyre with great ceremony over several months, for the cremation of the body. On the day appointed for the cremation, many *talapuini* (Buddhist monks) are invited to pray for the deceased, and they sprinkle them with water, which they call blessed, and perform many other superstitious acts. If Christians are ordered to carry bricks or wood for the construction of the building, can they help? If they refuse, they are considered ungrateful towards the king. Christian soldiers are called upon to accompany the new king, and to protect him amidst the crowds when he goes to light the pyre.

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R. According to the opinion and instruction of the Reverend Consultor.

INSTRUCTION. — Greetings or congratulations offered to pagans and idolaters, on the occasion of their advancement to some office, are to be considered illicit, if that office pertains only to superstitious matters, and not to civil affairs; because such greetings would be concerning a bad thing. On the contrary, they are to be considered permissible if that office pertains not only to religious matters, but also to civil and political affairs; because when such greetings and congratulations are offered by those who publicly profess the Christian religion, they must be understood to be offered because of the relationship of that office to civil matters, and not at all to religious and superstitious matters, and in this case, a protest, which would not make the act licit in the first hypothesis, is not necessary.

[*Latin ed. p. 320*]

320 APPENDIX. 111. cessarla; sed hoc potest fieri, nisi si facile prospiciatur quod ex hoc aliquid detrimentum rei christianae oriri potest. His principiis, missionarius facile problemam solvere poterit de salute etis, quae hominibus tribui debent cum in bonos fiunt, et de tempore quo pannum induunt bonziorum. De cooperatione ad ritus superstitiosos, haec regula observanda est: si cooperatio pars est ritus superstitiosi, tunc illa censenda est formali, intrinsecus mala; et numquam licet eam facere. Contra, illa censenda est materialis, si pars non est ritus superstitiosi. Grave detrimentum quod oritur cooperanti, si ab hac cooperatione materiali abstinere voluerit, eam licitam faciet, etiamsi scandalum adfuerit, quod a theologis "pusillum" dicitur; quia ex lege caritatis nemo tenetur, cum gravi suo detrimento, scandalum tale removere. Quare, si missionarius praeviderit, quod Christianis, qui adlaborare iubentur ad construendum focum, de quo in proposito dubium est, grave detrimentum oriturum si illius constructioni adlaborare recusent, etiamsi scandalum "pusillum" nuncupatum adfuerit, Christianos illos peccati reos declarare non poterit. Quod spectat ad Christianos milites qui vocantur ad comitandum et custodiendum regem de medio turbarum euntem ad accendendum focum, tenenda est doctrina Tertulliani, *Liber de Idololatria*, cap. 5: « Utinam nec videre possimus quae facere nobis nefas est. » Sed licebit adesse in quibusdam quae nos homini, non idolo, officiosos » habent. . . Si propter sacrificium vocatus assistam, ero particeps idola»trariae: si me alia causa coniungit sacrificanti, ero tantum spectator » sacrificii. » Cum vero Christiani milites, de quibus in proposito dubium est, non propter ritum superstitiosum vocati eidem adsistant, sed comitandi et custodiendi regis causa de medio turbarum, id eos non idolo sed homini officiosos facit; eos non superstitiose ritus, sed alia causa regi coniungit superstitiosum ritum peragenti: ideo participes non sunt superstitionis, sed spectatores

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tantummodo ritus superstitiosi, et propterea immunes a peccato.

[*Latin ed. p. 321*]

321 APPENDIX III. From the Sacred Congregation of the Propagation of the Faith, June 20, 1866 – To the Apostolic Vicar for the Gallas: It is doubted whether a Catholic priest can be present at certain ceremonies. The inhabitants of Kafa, although they boast of being Christians, and observe ecclesiastical fasts, and when they meet priests, they are sprinkled with blessed water, are nevertheless very far from the profession of Christianity, and are often not even baptized. They especially venerate Saints George, Michael, and Gabriel, and often invoke them by name. Those who have vowed a devotion to one of these saints for a year, on the feast day of that saint, go to the church and offer the priest a candle, incense, and a cow or a sheep. The priest accepts all of these things in the name of the Saint, lighting the candles on the altar, burning the incense, and touching the cow or sheep with his hand. Then, the cow or sheep, having been offered in this way, are taken to a place near the church, and there, before a large crowd of people, they are sacrificed in honor of the Saint. The sacrifice must be performed by the hands of deacons who are celibate. The fat of the sacrificed animals is almost always burned as a kind of holocaust. The meat is served at a feast, to which the offerers, the caretakers of the church, and the priest attend. They attribute so much power and efficacy to this offering of candles, incense, and animals, that they firmly believe that they are justified and sanctified by this single offering, whatever a Catholic missionary may say to the contrary. When one of them dies, the relatives, as soon as possible, usually within twelve days of the death, approach the priest and offer him a candle and a drink, asking him to perform the funeral rites for the deceased. Before the priest agrees to this request, he receives a certain payment from the relatives for the performance of his duties, and he demands a guarantee. Then, he lights the candle, recites certain prayers from a book, and drinks the drink. In a similar manner, the funeral rites are performed on the twentieth, thirtieth, and fortieth days. On the fortieth day, a solemn funeral feast is held, which they call "tezkar." The priest, in fact, goes to the house of the deceased, performs the funeral rites over the grave, blesses the feast, spends the day happily with the relatives of the deceased, and receives a very ample reward for his work, namely, several cows, which he collects as if by a kind of tithe. The "lezkar" feast is very dear to both the Kafins and the Abyssinians. The Kafins consider it an excellent religious duty, and they place great trust in it; the Abyssinians believe that if they omit this feast, they will not be able to enter paradise. It should also be noted that the Kafins are very addicted to magical superstition. And indeed, magicians are very powerful and influential among them, forming a kind of brotherhood, over which the king himself presides. The spirit of

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magic, by which the magicians are possessed, is...

[*Latin ed. p. 322*]

322 APPENDIX III. they take, they call "deocce," a word which appears to be derived from the Portuguese language. Furthermore, the Kafan people show such reverence for the spirit of "deocce" that even Christians are compelled to invoke and swear by "deocce," and this not merely out of habit, but also due to a certain legal necessity. With these premises, the following questions are raised:

1. Can a Catholic priest, in a spirit of tolerance, in order to win over the people to the Catholic mission, lawfully enter, as a known Catholic priest, into those churches where the aforementioned "deocce" worshippers gather, and accept candles and light incense, thus participating in a religious function of people who are merely nominally Christians, and who, in performing this function, mix many superstitions with their traditional beliefs?

2. Can a Catholic priest accept animals destined for sacrifices, while protesting against these very sacrifices, and do so only in order to avoid refusing his ministry, so that he may preach against these superstitions on the occasion of this special gathering?

3. Can a Catholic priest sprinkle these Christians with holy water, according to their ancient custom, especially those who either reject the Catholic minister or are indifferent to baptism or other matters, and this in order to avoid confirming them in their vain hopes?

4. Can a Catholic priest lawfully perform the customary funeral rites for people who are not baptized and are merely nominally Christians; rites which consist of lighting a candle and reciting certain arbitrary prayers; and this in order that the priest may be able to preach on the occasion of this popular gathering?

5. To the extent that a Catholic priest cannot lawfully perform such funeral rites, can he at least receive the customary payment for those same funeral rites, omitting any religious function? The reason for doubting is this: because if a priest were to accept such a payment, even if he were to state that he is accepting it only in the name of tithes, there would always be a real danger that the funeral rites would be considered as having been performed.

6. Can the Christians living in Kafa lawfully swear by the name of "Deocce"?

R. (Regarding 1.) The difficulty that prompted the Apostolic Vicar to raise question 1 seems to have arisen from two sources: firstly, from communication in sacred matters with people who are not baptized and are merely nominally Christians, and secondly, and even more so, from the many superstitions that these people hold, according to the tradition of

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their ancestors, in relation to the function described above.

[*Latin ed. p. 323*]

APPENDIX III. 323 intermiscent. These are the very words of the Apostolic Vicar: "That" the Catholic priest... "may receive the candles, burn incense, and perform religious functions for people who are not Christians, except in name, especially since even among these, there are many superstitions mixed in with their traditional beliefs. " However, since such superstitions are mentioned, but not explained, the Fathers ordered that the esteemed Apostolic Vicar clearly and distinctly explain what those superstitions are that accompany the offering of candles and incense, and what are the traditional beliefs from which these superstitions arise. (Ad 2.) Regarding the function mentioned in question 2, namely, where certain animals are offered in honor of the Saints George, Michael, or Gabriel, and are received by the priests in the name of the Saints, and afterwards are sacrificed by a celibate deacon near the church, this, as it is explained, is certainly not permitted, nor can it be tolerated in any way among the faithful, unless all superstitious elements or those that give the appearance of superstition are removed; especially if there is any intention of sacrifice, the slaughter by a celibate deacon, and the burning of the entire animal as if it were a holocaust. For the slaughter of animals should be demanded of no one other than a celibate deacon, and if the entire fat is burned as if it were a holocaust, this contains a manifest superstition; therefore, it is forbidden for a Catholic priest in any way to participate in it. But he would participate if he accepted animals destined for sacrifice. Nor does a protest against the impious offering of animals excuse him, nor does the opportunity to preach against these superstitions. For such a protest is of no use, since it is contrary to the deed, when the priest, without any compelling necessity, cooperates, and it is absurd to allow someone to participate in a superstitious rite in order to have the opportunity to condemn the same rite before a crowd of people; indeed, as Saint Augustine says, those things which are certainly sins should not be done for any good reason, for no apparent good purpose, nor with any good intention (Lib. contr. mendae. Cap. VII). (Ad 3.) The answer must also be negative to question 3, if the sprinkling is requested with a superstitious intention, or if it carries the danger of confirming or fostering a vain and harmful trust derived from that very sprinkling. But if it is certain that this intention and this danger are completely absent, and no scandal is feared, nothing prevents people who are only nominally Christians from being sprinkled with holy water, since even irrational and inanimate creatures are sprinkled in a similar manner.

[*Latin ed. p. 324*]

324 APPENDIX III. (Ad 4.) But an absolutely negative answer is given

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to question 4. For, when it is a matter of men who are only nominally Christians, who have departed this life without baptism, it is altogether not permissible to celebrate ecclesiastical funeral rites for them; which is clearly deduced even from the Roman Ritual itself. And indeed, the ceremonies and rites of funerals are employed as if they were true mysteries of religion, signs of Christian piety, and the most salutary intercessions for the deceased faithful. Therefore, to honor the funeral of men without baptism, and therefore dead outside the Catholic Church, with these ceremonies and rites, such as the lighting of candles and the recitation of prayers, is as if one were openly declaring that these men might be in a state of salvation. Furthermore, such funeral rites celebrated by a Catholic priest are disapproved of, because they involve a communication in the divine things with unbelievers or manifest heretics. Moreover, since the meal, which they call "tezkar," is considered as part of the funeral itself, it is certainly not permissible to attend it, and much less to bless it, if it is celebrated for a deceased person who is notoriously a heretic, or unbaptized, or otherwise unworthy of ecclesiastical funeral rites. (Ad 5.) Since it is illicit to celebrate sacred funeral rites for those who have died outside the Catholic Church, it is also illicit to demand or receive any payment for this service, as is raised in question 5. Indeed, natural justice itself forbids a Catholic priest from demanding a fee, or receiving it as due, for a religious function to which he has refused to consent, and for which he is therefore in no way obligated. But furthermore, he would sin gravely through scandal if, by receiving a fee, he is considered, in the opinion of the common people, to have accepted payment for the funeral rites. (Ad 6.) It is no less illicit for Christians to invoke and swear by the name of Deocce, as is raised in question 6. Whatever the etymology of the word "Deocce" may be, it is certain and established that this word, in common usage, signifies a spirit of magic, namely, the devil, the father of lies. Consequently, those who swear by the name of Deocce are offering the devil the worship of latria. For, as the Angelic Doctor says, latria is offered to him whose testimony is invoked by an oath. And therefore, it is commanded in Exodus 23:1, "Keep all things that I have said to you. And by the name of strange gods you shall not swear, neither shall it be heard out of your mouth." Even if Christians intended this word to refer to the true God, this does not exempt them from sin in any way. Firstly, it is utterly improper to call the true God by a name by which the most impious spirits of magic, or the devil, are worshipped. Secondly, since an oath is given with regard to the intention of the one demanding it, Christians who swear by the name of Deocce will be considered, in the public opinion of men, to be invoking that very spirit of magic, and thus they will have committed an act of falsehood.

[*Latin ed. p. 325*]

APPENDIX III. 325 The power of religion, and even magicians, will con-

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firm this repeatedly in their superstition. Therefore, whatever the internal intention of Christians may be, it is absolutely forbidden to have them swear by the name of God. S. C. S. Officii, February 25, 1773 – Vic. Ap. Tunk. Orient. Doubts concerning the rites used around the coffin. 1. Is it permissible for Christians in Tunkin to prostrate themselves before the image of the Crucifix placed beside the coffin, or above the coffin, or in the hands of the deceased, excluding any practice that suggests superstition? 2. Is it permissible, with a public declaration understood by all present, stating that it is not the coffin but the Cross that is being venerated, and that this act of reverence is offered to Christ for the soul of the deceased? 3. Can Christians salute the missionary, whether he is seated on a bench near the coffin, or beside it, or even walking around the coffin, by bowing to him? The custom in this Mission is for Christians and missionaries to say prayers for the deceased in the place where the coffin is located; 4. However, sometimes there has also been something superstitious present, and I have decreed that, whenever this occurs, prayers should be said only in the church, and not in the house. Many have accused me of excessive severity for this course of action; nevertheless, I did not consider it right to deviate from this opinion, lest some connection appear between Christian practices and superstition. R. The Sacred Congregation General of the Holy Office, having been convened before Clement XIV, decreed that the answer to all the doubts should be: "It is not permissible," and added: "Let this instruction be transmitted to the Apostolic Vicar and to all the Prefects of the same Kingdom, dated 1753." S. C. S. Officii, April 10, 1777 – Vic. Ap. Sutchuen. Doubts concerning certain prostrations towards the deceased. 1. Is it permissible to allow the Chinese prostrations, commonly called "Koteou," as a sign of pure civil observance towards deceased parents, in any case, even in cases of great affection or persecution, despite the prohibition of the Apostolic See? 2. Since it is very difficult to dissuade Christians from the practice of prostrations, is it advisable to approve the plan of some missionaries, that before all prayers and ceremonies, the deceased be buried, and that only then, after he is in the ground...

[*Latin ed. p. 326*]

326 APPENDIX III. It is demanded that prayers be offered with lights and other ceremonies, which have no connection with pagan practices, or which appear to be of a superstitious nature. 3. Whether it is fitting to prohibit the use of incense and candles in the funeral rites of the deceased, as well as prayers offered with bowed heads at the graves of the dead; since these practices have a connection with the ceremonies of pagans, and Christians, being easily led astray in their faith, may be readily drawn back to their former errors, and the unbelievers may be scandalized, thinking that Christians offer the same worship to the dead as they themselves do. R. To 1. His Holiness was greatly surprised, after the most recent Consti-

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tutions issued by his predecessors, the Roman Pontiffs Clement XI and Benedict XIV, and after the Instruction issued by this Sacred Congregation for the Propagation of the Faith in the East in 1753, which was first given to the Apostolic Vicar of Tonkin and then extended to other missions, concerning the civil worship of the dead, which, within certain limits, is permitted; that the Chinese prostrations have been obtained as a purely civil and political act of worship, when it is clearly established from the aforementioned Constitutions and the Instruction that these prostrations cannot be freed from superstition in any way, even if those who perform them have a different intention, or declare a protest, or separate them from any other superstitious practice; for they are inherently illicit and superstitious, and are not bad because they are prohibited, but are prohibited because they are bad. Nevertheless, His Holiness is confident that no question will arise in the future regarding these prostrations, and that all workers in the evangelization of the Chinese Empire and other neighboring kingdoms and provinces will, considering their inherent wickedness, agree uniformly in this matter, according to their own religious zeal and purity, and their due reverence for this Holy See; and that they will furthermore make every effort to ensure that the opinion of mere civil obedience in this ceremony is completely eliminated from their own neophytes, and that its practice is completely avoided, whatever the circumstances. R. To 2. His Holiness disapproved of such a plan; and, diligently commanding that the sacred ceremonies and rites, which the Catholic Mother Church uses so profitably in the funeral rites of her children, be observed, he ordered that the usual prayers and Mass be celebrated, in the presence of the deceased's body, if possible, before the burial. However, if, at times, a situation arises in which a missionary foresees the danger of prostrations, while the body remains above ground, and he is unable to prevent it by any possible means, then His Holiness benignly allows the deceased to be buried before all prayers and other ceremonies. For it is better that some commendable custom be occasionally...

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APPENDIX III. Let the deceased be changed, or, if that is not possible, let him be deprived of some spiritual good, rather than that a place dedicated to idolatry should remain. Furthermore, let the missionaries carefully see to it that such cases do not occur frequently, and let them not think that they can remove the danger by effective warnings and persuasions; on this matter, the consciences of the missionaries, and those who lead them, are heavily burdened. Moreover, His Holiness commands them to take care that, even in cases of true necessity, no body be buried, except after a suitable interval of time, in which there remains no doubt of death. Regarding the ancient and most pious custom of bringing lit candles to the funerals of the deceased and of placing them around the coffin near the body of the

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deceased, and of using incense at the appropriate time and place, His Holiness commands that this custom be maintained in every way. Nor should the scandal of the faithful, or even of the unbelievers, be easily feared, since the ceremonies differ; for everyone knows that the lighting of lamps and the burning of incense are done differently by the Gentiles, and that candles and incense are used differently by the Holy Catholic Church. Nor does the same usage, if it is different, suffice to introduce the same institution. Furthermore, it is the duty of the missionaries to instruct the ignorant and the weak, and to teach them about the differences in rituals, and about the different sense of the Church, especially the neophytes; therefore, the case of a just offense to the union is a very difficult one, and if such a case occurs, and is seen to be insurmountable (for not everything can be foreseen that depends on the circumstances of time and place, or on the people involved), then only at that time will His Holiness permit them to abstain from the aforementioned rituals. But, as stated above in 2, let the missionaries take care entirely not to create or increase difficulties through inconsiderate presumption, for which they will have to give a clear account to God and to their Superiors. As for the genuflections of the faithful when they pray at the graves of the dead, if no ecclesiastical law prescribes them, His Holiness has wished that the Prefects of Missions, and other Ordinaries, may be able to forbid them, whenever they have an affinity with the prostrations of the Gentiles, or offer any other occasion or appearance of evil. S. C. S. Office of March 2, 1868 — Vic. Ap. of Laponia. Doubts regarding matters and rites concerning the dead. There are many rites and matters whose superstitious nature is undoubtedly evident, such as the tablets of the dead distributed by the priests of idols (commonly called bonzes), and the superstitious writings written by the same priests.

[*Latin ed. p. 328*]

328 APPENDIX III. practices, the altar, or rather, a sort of tabernacle in which the ancestral tablets are kept and displayed, honors are exhibited to the ancestors themselves, a feast is celebrated annually in their honor, a contribution is made to the construction or repair of temples of idols (commonly called pagodas), the invocation of a priest of idols at the death of a believer so that he may perform superstitious rites, the coffin of the deceased is adorned with superstitious writings, etc. These practices, as superstitious, are such that, although a new and very serious persecution is to be feared, missionaries do not hesitate to forbid Christians from receiving the Sacraments. Other practices and customs are found concerning which there seems to be doubt as to whether they are superstitious. Since the matter appears to be of the greatest importance due to its consequences, the missionaries have not dared to resolve this doubt, and they seek light and counsel from the infallible oracle of the Holy See. In the case of death, civil magistrates delegated to investigate the death come to the

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house of the deceased; after this, a priest of idols is sent to perform the customary superstitious rites. True Christians, fearing persecution, do not dare to block the door of the house to the idol priest, either by force or by formal denial, but rather they behave with patience; after the superstitious rites have been performed, and the idol priest has departed, the Christians hasten to destroy all traces of the superstitions with fire. Therefore, the question arises: whether this tolerance constitutes an external profession of superstition or not, and therefore whether it is to be tolerated or not? Answer: Provided that they truly behave passively, without cooperating in any superstitious rite, and, if possible, without participating, it can be tolerated, as is explained in the case presented. S. C. S. Of the Congregation, July 30, 1886 – Archbishop of Algeria. It is asked whether it is permissible for Catholics to acquire properties with the burden of a tax, etc. Is it permissible for Catholics residing in the same kingdom (Tunis) to acquire or retain properties that are subject to a perpetual tax, commonly called "curel," which must be paid annually to a special administration established by the Prince for the benefit of pious Muslim institutions, and from which funds are provided for mosques and ministers, public roads, and other things that pertain to the public good or beneficence? Answer: According to what has been explained, there is no reason to be concerned.

[*Latin ed. p. 329*]

329 FROM THE HOLY CONGREGATION OF THE COUNCIL OF URGELL. CONCERNING THE REDUCTION OF MISSES. Dated June 16, 1894. A summary of the case. The Reverend Raymund Rey, Rector of the parish of Tirvia in the diocese of Urgel, presents the following petition to the Holy Congregation, which the Bishop has testified to be in conformity with the truth and recommends. The petition of the parish priest is as follows: "The late D. Franciscus Bartomen, in his will, ordered that his testamentary executors should arrange for the celebration of a daily Mass with an alms of two *librellas* (pesetas) in his behalf; this daily Mass is to be celebrated by the Rector of this parish of Tirvia, or by another priest by his mandate. "To fulfill this mandate, the testamentary executors have transferred as many bonds of the railway company as are sufficient to ensure that the aforementioned daily Mass with the alms of two *librellas* for each Mass is celebrated; these bonds are kept in the diocesan treasury. "However, over time, since the Government has imposed a certain, albeit small, tax on both the capital and the annual income; and also because of the minor expenses involved in the custody and administration of said capital, the current revenues are not sufficient to collect the aforementioned alms for each daily Mass. Therefore, since no one is obligated to increase the capital (at least, this is what the testamentary executors claim), the petitioner humbly requests that this Holy Congregation deign to provide

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an answer to the following questions: SUMMARY OF THE CASE.

[*Latin ed. p. 330*]

330. URGENT QUESTIONS. "1° Whether the parish priest of Tirvia is obligated to celebrate daily Mass with a reduction in the alms; or rather, whether the number of Masses to be celebrated should be reduced in proportion to the alms of two *libellae*. "2° What is to be done in the future, if the annual income of the aforementioned charitable society, derived from railway shares or other equivalent securities (public bonds), suffers a loss due to the government or for some other reason?"

SYNOPTIC DISCUSSION. It is clear that the question is reduced to this: whether the heirs are obligated to make up for the lost income; or rather, whether the number of Masses should be proportionally reduced due to the decrease in income. Indeed, as the parish priest reports, the testamentary executors deny being obligated to increase the principal. This position is clearly supported by the Council of Trent, in Session 25, chapter 4, which decrees that the number of Masses should be reduced in proportion to the diminished income. Therefore, the Sacred Congregation of Propaganda Fide often reduces the obligations when, without the fault of the heirs, the income decreases, provided that the obligations should correspond to the income; as was done in Valladolid on May 22, 1784, §; and in *Nullius*, of Saint Martin, August 24, 1822, §; and in Todi, Reduction of Obligations, January 27, 1827, and as Fagnan teaches in chapter *Ex parte*, number 2, concerning constitutions. And indeed, Pope Benedict XIV recognizes this as a just reason for reducing the number of Masses in *De Syn. Dioec.*, book 13, chapter, number 28, saying: "The reasons for which it is permissible to consider a reduction are, in most cases, indeed perhaps always, a decrease in the income that had been assigned for the fulfillment of the obligations." However, a significant legal obstacle seems to stand against the reduction, not only because the will of the testators must be respected according to the law, especially when it concerns the expiation of souls, as the Council of Trent, Session 22, chapter 6, and the Sacred Congregation of Propaganda Fide, in Rome, *Commut. volunt.*, June 14, 1866, state, but especially because it has been determined in this case that the legacy is of a natural...

[*Latin ed. p. 331*]

URGELLEN. 331: It is advisable to present the matter in such a way that it appears as a demonstration, and not as a definitive ruling. For, in the case of a testator who, without any specific assignment of property, has nevertheless stipulated a certain number of Masses and a specific alms, it is not certain that his heirs are obligated to fulfill this obligation. However, as Benedict XIV teaches in the cited passage, number 32, and as is confirmed by the Instruction customarily transmitted by the Sacred Congregation of

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the Council, in the case of legates established in a demonstrative manner, the heirs are obligated to supplement what is lacking. Therefore, it is the established opinion of the law that, in this case, the heirs are obligated to provide the necessary funds. Whether, however, considering the conditions of the times and places, and given the very heavy taxes currently in Spain; and also taking into account the amount of capital, namely the shares of the railway company, which the court has assessed for the satisfaction of the debt, which by its very nature arises from a commercial risk, greater or lesser profits may be realized, in this case, whether a reduction in the number of Masses can be made, will be judged by the Most Reverend Fathers with their customary prudence and equity. With these matters explained, the question was raised as to how the prayers should be arranged.

RESOLUTION. The Sacred Congregation, after deliberation on June 16, 1894, decided to respond as follows:

To I: According to the foregoing, the heirs are obligated to provide the necessary funds. However, if this is not possible, the answer to the proposed question is negative with respect to the first part, and affirmative with respect to the second part.

To II: Provision will be made, if the case arises.

PARISIEN. DISPENSATION FOR MARRIAGE. On August 11, 1894. Session 24, chapter 1, concerning the reform of marriage. Rachel Claire, a woman of 30 years, born on August 5, 1884, was to be joined in marriage to Émile Gaucher, who at that time had reached the age of 24. The marriage was celebrated before the parish priest and witnesses, with all the rites observed according to the sacred decrees of the Council of Trent, in the parish church.

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 332*]

332 PARIS. In a certain place, Charenton, in the diocese of Paris, within whose boundaries the spouses resided at that time. However, as subsequent events demonstrated, this marriage was contracted under an ill-starred omen. For, if we are to believe the woman, the man, being burdened by debts, desired nothing more than the promised dowry of the bride, which was quite substantial. Whatever the case, it is certain that from the very first day of the marriage, discord, quarrels, and disputes arose between the newlyweds and their parents; and these escalated to the point that, after eight days of cohabitation, the union was broken, and the man returned to his father's house. Both spouses asserted that the marriage had not been consummated, although Aemilius claimed that he had, on three occasions, unsuccessfully attempted to fulfill his marital duties due to the bride's physical condition. However, this contradicts the

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testimony of Rachel, who affirmed that the man always refused to perform marital acts. Subsequently, the woman turned to the civil court and first obtained a separation order, and then, on April 13, 1892, she also obtained a divorce. A Synopsis of the Dispute. OPINION OF A CANONIST. In the year 1894, in the month of August, on the 5th day, in the parish commonly called Charenton, in the diocese of Paris, Rachel Solange Olaireville and Abel Gaucher were married, by the words "I take you to be my wife." But, alas, from the very first day of the marriage, such quarrels and disputes arose between the spouses that common life became utterly impossible. Therefore, only one week after the marriage, the man was expelled from the woman's home, and he would no longer remain with her. The man bore this ill, and on several occasions, attempting to return to the marital home, at least to speak with the woman, he was repeatedly rejected with insults and threatening words. The situation reached such a point that the man, finally overcome by rage, prepared an ambush for the woman as she was traveling, and no longer...

[*Latin ed. p. 333*]

PARIS, 333 bis, but he was addressed with a rod and beatings. Such a crime, repeated several times, was brought before a lay judge, who, after considering the circumstances, pronounced two separate judgments at different times, namely, separation and divorce. After obtaining the final judgment of divorce, the woman appealed to the ecclesiastical tribunal, in order to request that a dispensation be granted to her from the valid and legitimate marriage, based on arguments presented regarding the lack of consummation. Therefore, the matter concerns the dissolution of a marriage that was validly and legitimately contracted; it concerns that dispensation which the Supreme Pontiff, by reason of the fullness of his power, does not grant unless the arguments demonstrate with the clearest light that the consummation did not in fact take place, and that there are very serious reasons for granting a dispensation. And indeed, no one can doubt that there are very serious reasons for granting a dispensation; but equally, many will deny that there are arguments that demonstrate with the clearest light the absence of consummation. I confess that from these things, some are understood, and from these, they are lacking, which seem not to illuminate the matter, but rather to shroud it in darkness. And so, the obscurity that the anatomical argument concerning the virginity of the woman is completely lacking; the obscurity that expert physicians do not exclude the conjugal embrace for one or the other occasion, but rather demonstrate the lack of consummation only with a probable argument; the obscurity that the man and the woman do not agree with each other in all things, and indeed, concerning those things that might seem to be the most important; the obscurity that the witnesses, in order to deny the consummation, present their testimony in such a way that they create doubt about their

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veracity; and even more so, that for that assertion, not a single argument is found throughout the entire process. Indeed, these things seemed to me so serious that, at the beginning, I hesitated, whether to admit or deny the consummation; and it was necessary for me to review the entire process again and again, in order to examine the words, the circumstances, and the details. And as was fitting, after good faith and careful consideration, I finally came to the conviction,

[*Latin ed. p. 334*]

334. PARISIAN. Concerning the marriage, of which we are discussing, it is asserted that it has not, due to the husband's reluctance, been consummated in any way, and that there has been no union, nor any marital embrace whatsoever. To demonstrate this, allow me, judges, to return to the beginning and to present the argument, which is derived from an examination of the woman's body, both in terms of fact and of law. Regarding the facts, there are two points worthy of attention: 1. That the woman, after being separated from her husband, was compelled, due to a certain infirmity, to undergo the insertion of an instrument into her genital organs, which is called a pessary; 2. That this insertion, although it lasted for a year, was nevertheless completed without any tearing of the hymenal membrane. And this is the case, as far as the facts are concerned. However, regarding the law, I beg you, judges, to allow me to speak with some restraint. For you know well that, concerning this matter, experts in medicine and canon law are divided into two groups: some absolutely maintain that, based on the examination of the woman's body, and the discovery of its integrity, along with the absence of myrtiform caruncles, an infallible argument arises against the consummation of the marriage. Thus speaks Zac-, chia, quaest. medie, legal, lib. 4, tit. 2, quaest. 1, n. 8, and many others, whether doctors or canonists, whom Pallottini cites verbatim in "Dispensatio," § XII, n. 119. Others, on the contrary, teach that the evidence derived from the examination of the woman's body is entirely fallacious, and that the signs of virginity are entirely doubtful and uncertain, and that virginity itself should be considered rather as a moral state than a physical one; indeed, they have observed that the hymenal membrane is granted to some women and denied to others, as Scuring has noted in his "Spennatologia," chapter 10, and Vannet in his work "De la génération," part 2, article 2. Thus think Henriquez in "Summa Theol. moral," lib. 2, de matrim., cap. 15, n. 3, Sánchez de matrim., lib. 2, disp. 2, n. 2, and Filippi in "Manuale di Medie, legale," Part III, page 665, along with a certain "Lexico," entitled "Manuel complet de Médecine légale," page 90. The former group strongly opposes the views of the older authorities...

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PARIS. Three hundred and thirty-five physicians, then canonists, and a

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consistent body of jurisprudence. One side follows St. Thomas (1), while almost all modern experts (2), including many canonists, follow the opinion of St. Raymond of Pennafort, who, having consulted with learned canonists, said: "Therefore, the canon states that the hand of the midwife and the eye are often deceived." I know that this last opinion should not be admitted without reservation; especially since there are, even among the moderns, those who either completely deny the possibility of conception, as does Mr. Roubaud (3), or maintain, with Mr. Pasquali (4), that in this case, marriage cannot be considered consummated: a position which, I have maintained (5), is also supported by a certain dispensation in Romana concerning marriage that is valid but not consummated. But at least it cannot be denied that the hymen may remain intact even if intercourse has taken place repeatedly. Physicians themselves have reported that some harlots have been found with an intact hymen (6), although this is a deceitful claim. In question VI, chapter X, article 1, St. Thomas admits the possibility of conception, even with intact virginity, or physical integrity. (2) One could cite the works of Longet, Coste, Rubin, Liégeois, Vallisnieri, Fleury, Buffon, and the principal medical lexicons. But for all, it is sufficient to cite one, namely, Mr. Capellmann, who, in his Pastoral Medicine, page 140, teaches that a fruitful impregnation of a woman can occur through the man's penetration, and therefore, without tearing the hymen, and without the formation of myrtiform caruncles. (3) *Traite de l'impuissance...* 3rd edition (1876), pages 44 and 629. (4) This was taught to me by a distinguished Professor of Obstetrics, when, for a certain reason, I considered it necessary to consult him on this matter. This is a very serious question, as it affects moral doctrine concerning impotence, conjugal onanism, and the consummation of marriage. It is regrettable that some modern moralists, embracing the doctrine of the possibility of conception, while the woman's physical integrity remains, have gone so far as to say that a woman who is potentially fertile, and a man who is not able to penetrate, can still achieve conception, provided that, whether through semen deposited in the mouth, in the vagina, or even in the most external parts, fertilization occurs. If this were true, all other things being equal, it would have to be said that marriage is consummated even through artificial fertilization. (5) The fertilization of a woman, and the consummation of marriage, are two questions that, whatever some moralists may think, are very distinct from each other, and even physically different. It would be desirable for someone to undertake a thorough investigation of these matters, especially after the modern medical doctrine on the possibility of fertilization without penetration of the male member. If the ancient physicians considered St. Thomas to be worthy of ridicule, the moderns, perhaps unknowingly, agree with him. (6) Gaspard, *Tract. De

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Matrim.*, vol. II, no. 1065, page 230.

[*Latin ed. p. 336*]

336. PARISIEN. The hymen is often flaccid and easily yields to force (1). Consequently, it is possible for the male member to be introduced without tearing the membrane (2). Therefore, as a certain medical lexicon has already stated, the integrity of the hymen does not constitute proof of virginity (3). Thus, legally speaking, the integrity of a woman, and consequently the absence of myrtiform caruncles, do not constitute absolute and certain proof of an unconsummated marriage (4). Conversely, neither does the tearing of the hymen, nor any other signs that follow consummation, absolutely prove that marriage has been consummated. For these signs, this tearing of the hymen, may be due to a previous marriage, or to other causes entirely. Thus, in widows who have entered into subsequent marriages, these signs do not prove that the second marriage was truly consummated. Similarly, it is not permissible to infer consummation from these tears and signs in women who, before marriage, have been forced to endure multiple acts, or who have undergone a surgical operation, or the insertion of a speculum or pessary. And what of that woman who, forgetful of modesty, has violated the sanctity of her virginity through criminal acts? Therefore, as the words of Monsieur Cancalon, which are read in the records, state, the argument derived from the physical examination of a woman, and from the state and condition of the hymen, is an argument that often fails, that frequently deceives; and therefore, it is vain (1).

(1) Esbach, Disput. Physiologo-Theol. Disp. i, c. VIII, a. III, pag. 116.

(2) Filippi, loc. cit.

(3) *Le fait seul de la présence de cette membrane ne constitue pas une preuve irrecusable de virginité: des milliers d'époux doivent en être persuadés.* (The mere presence of this membrane does not constitute irrefutable proof of virginity: thousands of spouses must be convinced of this.)

(4) It is one thing for marriage to be consummated by the deposition of semen in the external parts of the vagina, and another thing for it to be consummated by the true introduction of the male member without injury to the integrity of the hymen. I deny the former, contrary to some more recent moralists; I affirm the latter, adhering to the words of the most illustrious Professor already mentioned by me, Hercules Pasquali; who, while denying that true consummation of marriage can occur on one hand, solely through the deposition of semen in the external parts of the vagina, even if fecundation follows by accident; yet, on the other hand, he teaches that nothing prevents true consummation of marriage from occurring through the true insertion of the penis, without the tearing of the hymen. I considered it important to add this weighty medical testimony

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to the position.

[*Latin ed. p. 337*]

337. PARISIEN. The argument, at its utmost, does not exceed a presumption, and requires further proofs, so that the presumption arising from it may be converted into certainty. And this, as must always be said, is especially true in our case. We are dealing with a woman who is found in such circumstances that, according to the opinion of either the ancients or the moderns, the marriage of this same woman can be considered either doubtful, or improbable, or absolutely certain. And in truth, if it were established that this woman possessed an intact hymen and no pre-existing myrtiform caruncles, it would be necessary, following the ancients, to conclude that the marriage was absolutely not consummated. However, since the physicians who examined her follow the doctrine of the moderns, and have not excluded the possibility of consummation; rather, they have judged that, despite the integrity of the hymen, the genitalia of the woman appear to be such as would be present in a woman who has used them, perhaps only once or twice. Thus, it would become clear that, in this case, consummation must at least be considered probable. But if one observes that these particular conditions, which are verified in the genitalia of the woman, could be attributed to a violent introduction, by which the woman was forced to use them for a year, it will immediately become clear that the fact of consummation remains simply doubtful; and therefore, nothing can be deduced from it either for admitting or denying consummation. From all of this, let me arrive at this first conclusion: that the argument derived from the physical examination presents no difficulty in this case; for either we adhere to the doctrine of the ancients, and then from that testimony it would follow that the marriage, concerning which we are deliberating, was in no way consummated; or we use the opinion of the moderns, and then in this case, consummation can at most be considered doubtful, and therefore the doubt must be eliminated by other proofs, which are not lacking in the records (1). (i) When I come to the direct proof, I will demonstrate that the conditions verified in the genitalia of the woman are attributable to a violent introduction, and not to... (The text is incomplete here).

[*Latin ed. p. 338*]

338. PARISIEN. Another difficulty must not be overlooked, which arises from this, namely, that the husband and wife may present manifest contradictions, while one affirms that the marital union has been consummated, albeit ineffectively, and the other denies it. I see how important this matter is; for such a contradiction affects the very substance of the principal act, or at least a substantial modification of it. Indeed, to a great extent, the resolution of the doubt concerning those special conditions, which our doctors have taught us to find in the woman's genitals, depends on this. For

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if the union has truly been consummated, those conditions will certainly be present; but if no union has taken place, it will be certain that one of those conditions has been caused by a false introduction. Therefore, it is very important that this difficulty be resolved without delay. Now, assuming that there is no contradiction between the husband and wife regarding the substance of the act, since both steadfastly affirm that the marriage has not been consummated; I will immediately say that, in all other cases where a contradiction exists, full faith must be given to the woman, and none to the husband. Anyone reading the records of the process will immediately see that the woman has always been consistent, so that what she said at the beginning of her testimony, she affirmed in the middle, and concluded with the same statements. On the contrary, the husband brings together in the same testimony things that cannot be sustained by any reason, and of which there is a clear contradiction and opposition. And indeed, at the beginning, he asserts that, on the first night of marriage, the woman refused to perform her duty, due to quarrels that had already begun (1). Then, after recounting what happened during the first three days of marriage, he states that he had intended to take the woman away from her parents' home, in order to ascertain whether her parents were influencing her. After these events, he continues the narration of events up to the eighth or ninth day after the marriage, and, after explaining the causes of the disagreements, he confesses that, from the testimonies of the doctors themselves, he inferred that the marriage was either fully consummated, or at least that there was strong moral evidence of it (1).

(1) "I managed to calm her, but without being able to obtain the consummation of the marriage."

[*Latin ed. p. 339*]

PARISIAN. He declared that he was deeply afflicted by the fact that he had not been able to consummate his marriage, a matter which he affirmed was entirely inexplicable to him. However, completely forgetting all of this, when questioned by the judge, he responded that, during those eight days in which he remained with his wife, he had requested the marital act each night, and that the wife had always readily consented, and indeed sufficiently so to allow for consummation, although in fact it had not been achieved. He attributed the reason for this to either the difficulty that is generally associated with the first embraces of a marriage, or to the wife's timidity, or even to a fault of will on the part of the wife. Finally, after expressing his opinion regarding the physical conformation of the woman's genitals, he concluded by affirming that he had always and consistently been rejected by the woman, whenever he had wished to approach the marital embrace. Who, most wise judges, can reconcile these things? It is the same woman who readily consents to marital intercourse, and yet constantly repels the man from the marital embrace! It is the same woman

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who, during the first eight days of the marriage, consented to the act with her husband, and yet, on the ninth day, inexplicably resisted the husband's requests! It is the same woman who admits the embrace, at least to the extent that it seems sufficient for consummation, and yet is externally impotent to achieve it (1). And to the man who makes such claims, should credence be given, while he himself destroys what he is attempting to build? Moreover, it is evident from the records that, while the witnesses for the wife agree with her in the assertions she makes; conversely, the witnesses for the husband are so contradictory that they neither agree with each other, nor with the husband himself. Thus, to offer but one example, the husband asserts that the wife refused to perform the marital act on the first night of the marriage; and yet, his brother, the witness Eugene, testifies that the wife NEVER rejected the husband, and that she never refused to readily fulfill his request. The husband asserts that the wife suffered from a bodily defect that prevented consummation; and yet, Mrs. Morin, a witness presented by the husband, states (1) Regarding the abnormal conformation of the woman's genitals, the husband stated: "The defect in conformation would consist of what is called 'barré,' which would be an excessive development of the bones of the pelvis, and would require an operation."

[*Latin ed. p. 340*]

340. PARISIEN. When asked whether the woman suffered from any defect, the man replied that he knew absolutely nothing about it. The man asserts that, during the first eight days of their marriage, the woman readily approached him for embraces; and yet, the same Mr. Morin states that he heard the man say that he had never approached the woman, and that the woman had NEVER allowed him to embrace her. Indeed, another witness for the man, Mr. Cottin, adds that the man, while still living with the woman, repeatedly asserted that he was living with the woman as if she were not his wife. Finally, Mrs. Picot also testified that the man had said that he had had no intimate relations with the woman, and that this was due to the woman's obstinate refusal to consummate the marriage. Truly a remarkable woman, who, in one and the same action, refuses her duty and approaches for embraces! She is declared to be impotent, and it is not known whether she suffers from impotence! She is presented as being readily available to satisfy the man, and yet she is persistent in resisting the man's requests! These are the things that the man, and these witnesses, present together, if they dare to use them against the woman. I remember that I said that the witnesses for the man would speak in such a way as to cast doubt on their own veracity. But this not only does not harm the woman, but rather benefits her. For, from this, the coherence of the woman's testimony, and that of her witnesses, is strengthened and made clear, that those witnesses for the man, and the man himself, intended to

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weaken their case with lies and contradictions. And certainly, a lie must be found in those testimonies, in which it is asserted that the woman, at the same time, both wanted to fulfill her duty to the man and did not want to; that she is affirmed to have been both easy and difficult at the same time; that she is asserted to have always and never consented to the man's requests. Let the man say, let his mother and his brother say, let some witnesses at the ecclesiastical or civil tribunal say, that the marriage was not consummated due to a defect, due to impotence, due to a defect of conformation on the part of the woman! But to all of them, the expert physician, Mr. Bucquoy, responds, asserting that, after having examined the woman's body, he can safely attest to the excellent conformation of her external genital organs. And, lest it be thought that there was a defect in the internal organs, he describes them in such a way that it is clearly evident that there is none.

[*Latin ed. p. 341*]

PARISIAN. 341. Hence, the difficulty in ascertaining consummation could arise; not, indeed, from the hymen, which is said to be small and flaccid, nor from the lips of the same, which are asserted to be flexible, nor finally, from any hardness, which is affirmed to be absent. Therefore, whence, whence arises this difficulty, which is alleged by the husband, in ascertaining consummation? I concede, with the expert physician, that no argument can be deduced from the genitals of the woman herself to prove or disprove the fact of consummation. But, I pray, how could the expert physician fail to exclude the fact of consummation if he had discovered some infirmity, some impotence, or some defect of conformation? Therefore, having resolved and rejected the difficulties that might be drawn from the very acts themselves, and those that the Defender of the Bond might perhaps adduce, it is time to proceed to direct proofs. I shall demonstrate this with a twofold argument: first, by showing that moral certainty of the absence of consummation is sufficient, in these cases, to warrant the granting of a dispensation regarding a marriage that is valid but not consummated; and second, by showing that all the elements are present in this case that are required to establish such moral certainty. And first, I directly and explicitly prove that moral certainty of the absence of consummation is sufficient to warrant the granting of a dispensation, relying on the authority of the Doctors, and on numerous resolutions of the Most Holy Congregations. Among these, those stand out which demonstrate that the Holy Penitentiary [Congregation] has sometimes granted dispensations, even in the forum of penance, regarding marriages that are not consummated, without any process, and based solely on the sworn testimony of the parties: testimony which clearly does not exceed the bounds of moral certainty. Indeed, if we were speaking of complete proof, this should result, from Chapter 4, "De proh." [Regarding

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prohibitions], from three elements: namely, from the sworn testimony of the parties, from the examination of the woman, and from the testimony, which they call, of the "seventh hand." (2) But this [complete proof] is not required here. (1) *Ad verbum* - "Dispensatio" - § XII, n. 177. (2) I do not speak of the three-year experiment, since it is already established that the Court has dismissed it.

[*Latin ed. p. 342*]

342. PARISIEN. He does not require a conjugal examination, but only an ancillary one, as he teaches Ursaya, when he says: "In chapter *Laudabilem*, concerning frigidity and malice, in order to prove virginity... the conjugal examination by the hands of relatives and the examination to be made by midwives is not prescribed, but it is clearly stated that the confession of the spouses alone is sufficient, with the hands of relatives." (1) This is in agreement with Conscius (2), Clericatus (3), Cardinal De Luca (4), and many others. Therefore, if the physical examination of a woman is not always required, if a dispensation can be granted, considering only the oath of the parties and the testimony of the relatives, it is already clear that moral certainty is sufficient for granting a dispensation from consummation of the marriage. Indeed, as Sanchez testifies (5), the certainty that is required and is sufficient for granting the grace of dispensation is not legally defined; therefore, no more certain rule can be prescribed than that it be the one that would give a prudent man, considering the circumstances, certain knowledge. What more can be said? Let the text of the law speak for itself, where it says (6): "But if both declare, with the hands of relatives, or of widows of good reputation (if relatives are lacking), having performed the sacred rites of the Gospels, that each has never been united with the other in carnal copulation, and that they have never become one flesh, then it seems that the woman is able to enter into a second marriage." Therefore, it remains proven by law that the moral certainty that results from the oath of the parties and the testimony of the relatives is, at least sometimes (7), sufficient to grant a dispensation.

(1) *Laudabilem*, in the chapter concerning frigidity and malice.

(2) *De Separ.*, *Tractatus Goni*, Book 3, chapter 2, number 126.

(3) *De Sacram. Matr.*, Decree 13, section 39.

(4) *De Matrim.*, discourse 7, number 7.

(5) *De Matrim.*, Book 2, dispensation 45, number 4.

(6) Chapter 4, *De Frigid.*, and malice.

(7) I say "at least sometimes" because the physical examination of a woman does not seem necessary when one of the spouses affirms and the other denies, and the cause is in controversy. But this does not apply to our

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case, since both spouses swear that they have not had consummation.

[*Latin ed. p. 343*]

PARIS. 343. If, due to most serious reasons, marriage has not been consummated, a dispensation should be granted. However, the moral certainty in this case is so complete, so evident, that it does not require demonstration through arguments. For the oath and testimony of the parties, which would suffice by themselves, are joined to the physical examination of the woman, so that from this very examination, the first and greatest probability arises that consummation has not taken place. And although expert physicians may admit that they cannot, from the physical examination of a woman, derive a certain argument for proving or disproving consummation (1), nevertheless, the reason for this conclusion is not positive, but only negative, namely, it does not arise from some positive sign that directly or certainly indicates consummation or its absence; but rather, it is inferred that just as the penis could have been introduced into the woman's vagina without tearing the hymen, so too, under the same conditions, the insertion of the male member could have occurred; 2° Nevertheless, despite this, the physicians affirm that they find in the woman's genitals all the signs of virginity; therefore, 3° they conclude that nothing can be inferred from this that is not consistent with the moral proofs of the lack of consummation. It is not necessary to insist on the words with which the physicians assert that the woman's genitals appear as they would in a woman who has approached marital relations once or twice; for 1° these particular conditions of the woman's genitals are attributed to (1) Therefore, the physicians arrive at this conclusion because they follow the more recent doctrine regarding the possibility of consummation without injury to the virgin's integrity. However, once the ancient opinion is admitted, which the Sacred Congregation consistently follows, it would absolutely be concluded that consummation has not taken place, and this conclusion would be held as certain, not only morally, but also physically. Therefore, if any difficulty arises in this case today, it must be solely attributed to the doctrine of the physicians, which the Sacred Congregation has not yet deemed acceptable. In short, the lack of consummation of the marriage, regarding which, according to the doctrine of the ancient physicians, which the Sacred Congregation follows, must be held as absolutely and physically certain; according to the more recent opinion, which I believe should be adopted, it must be held as morally probable. However, this moral possibility is clearly demonstrated to be a true moral certainty by the other circumstances and proofs.

[*Latin ed. p. 344*]

344. PARISIEN. With repeated and insistent introductions, I, not a profane person, but one who has been praised by him on several occasions, as-

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sert that the esteemed Professor Pasquali stated this, after having consulted me on this matter: 1° that, in truth, these introductions can be attributed to the case; 2° that expert physicians implicitly acknowledge this, when they assert that all the signs of virginity are found in the woman, and that nothing is present in her genitals that would contradict the moral proofs of non-consummation. I therefore see that positive certainty cannot arise from this. However, no one will deny the great weight of the statements made by expert physicians, called by the ecclesiastical judge, who did not hesitate to assert, under oath, that: 1° the probability of non-consummation in this case is so great that it should be considered to have reached the *MAXIMUM GRADUM*; 2° that they all agree with Mr. Cancalon, who, when asked to give medical testimony regarding non-consummation, after having completed the examination, concluded by saying: "Everything was found in the woman that is characteristic of virginity." Therefore, if, even in the absence of a thorough examination of the woman, sufficient certainty can be obtained regarding non-consummation, how much more so should this be said when the examination has been carried out and the consummation is declared to be highly probable? Indeed, My Fathers, the medical examination, which is considered highly probable, is confirmed by the testimony under oath, by this testimony of the highest authority, by the additional evidence, and by the circumstances. I am not unaware that the husband and wife may have given conflicting accounts regarding the cause of non-consummation; but it is to be noted that they agree on the very fact itself, since both affirm, under oath, that the marriage has not been consummated. Nor is collusion to be feared, which certainly could not have been present where aversion between the parties was proven by blows and beatings. And what of the possibility of collusion, after the violent expulsion of the husband from his parents' home, after the insults and contempt shown by the wife, after the attempted accusation of the husband, and after a judgment granted to the wife?

[*Latin ed. p. 345*]

PARISIAN. 345. If anyone were to suspect collusion, they would be compelled to admit collusion even among the witnesses, all of whom, without exception, both before the civil and ecclesiastical tribunals, affirmed with one and the same voice the non-consummation of the marriage and the veracity of the parties. And it must be noted, most wise judges, that these witnesses testified to what they themselves had seen with their own eyes, or what they had learned from the parties at a time when no suspicion existed. Furthermore, the woman's mother testified that, during those eight days in which they remained together, she never saw the husband show any signs of affection towards the wife. Indeed, he almost never remained at home, and when he returned in the evening, he appeared so exhausted that he would eat and immediately fall asleep. And after these things, she

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adds that the husband, fearing that his wife might complain about his fate, confessed to her that he had not dared to touch his wife, because he considered her to be too weak. I heard that the marriage had not been consummated, as Delphon said, before the woman considered reporting her testimony. The testimony given by the woman's father contains such things as confirm the non-consummation, based on the husband's own words publicly proclaimed (1). Mr. Courtois affirms that, in the year 1888 (that is, before the sentences of separation and divorce were pronounced), he read a letter in which the husband, Gaucher, asserted that he had left his wife in the same condition in which he had received her (2). The same was testified by Mrs. Blum, as having been asserted by the husband himself to a young woman, with whom he was living, and indeed, on those very days in which these events were taking place (3). Immediately after the separation, the husband's brother testified: "I heard my brother say that the marriage had not been consummated" (4). Mr. Faivre testifies that he heard from the woman's mouth the fact of the non-consummation (1) "Mr. Gaucher also affirmed that the marriage had not been consummated, and he said this everywhere." (2) "...towards the beginning of 1888... Mr. Clairville showed me a letter, which I read, and in which Mr. Gaucher said that he had left his wife as he had received her." (3) "...I distinctly remember that at that very moment, he also declared that he was leaving her without ever having consummated the marriage with her." (4) "My brother certified to me the fact of the non-consummation of the marriage shortly after the separation."

[*Latin ed. p. 346*]

346. PARISIEN. Firstly, by Madame Clairville and her daughter; secondly, frequently by public rumor and reputation; thirdly, by a certain official, who stated that the matter was being publicly discussed by the aforementioned Gaucher; fourthly, finally, by a certain merchant, who openly spoke of this matter in Paris (1). Monsieur Morin affirms that Virum never approached the woman, as he was repeatedly asserted by the man himself, from the time when he had dealings with him (2). Indeed, he recounted this several times to the witness, Monsieur Cottin, as the latter testified (3). Monsieur Picot testifies that there was no notorious consummation (4), and even the man's mother acknowledges this, although she attributes the cause to the woman (5). I shall mention the remaining witnesses, who, while acknowledging nothing regarding the consummation of the marriage, neither favor the man nor the woman. However, as with all the others, they give the fullest testimony regarding the man's and the woman's veracity. What more can be said? Does not that very great probability of non-consummation, which expert physicians assert, become at least a moral certainty, when it is unanimously confirmed by both the parties' oaths and the testimonies of witnesses? And if you wish to know more, consider the quarrels that began at the very wedding

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feast, when, as the man himself admits, it came to the point that the woman's mother threatened to drive the man himself out of the house, amidst the drinking. Let the subsequent quarrels be recounted, in the journey, in the man's house, in the woman's house, on the first, second, and third days after the marriage, until the separation of the spouses, when the man's mother was dismissed from the woman's house, when the man (1) "I first learned from Madame Clairville and her daughter that the marriage had not been consummated. Then the public rumor... notably an former customs inspector... A merchant in Paris spoke of it publicly. Everyone was talking about it." (2) "...Mr. Gaucher told me... that he had not had intimate relations with his wife." (3) "Two or three days after the marriage, Mr. Gaucher told me... that he had done nothing at all with his wife, and he repeated this to me often." (4) "It was publicly known that no conjugal relations had existed between the spouses." (5) "My son told me that the marriage had never been consummated, and Mr. Clairville told anyone who would listen."

[*Latin ed. p. 347*]

PARISIAN. He proposed to bring the matter to the parents' house, when the issue arose concerning a hidden matter, namely, the dowry of the woman, and the sale of a certain house, so that the husband could pay off a debt. And if that were not enough, these words cast doubt on the honesty of the husband, and rumors arose about the impotence of the wife, and then an accusation was made, and then it was denied, the introduction of a prostitute into the marriage, suspicion of clandestine relationships, mutual accusations, serious quarrels, a threat of a singular confrontation, the husband's expulsion from the house with insults, with mockery, with threatening words: do not all these things prove that the minds of the spouses were so averse that a marital embrace became impossible? Certainly, there was no consummation of the marriage, where the aversion of the souls began with the very marriage, where disagreements grew more and more each day, where it is established that the marriage was contracted out of love for money (1), where the honor of the woman was attacked, where quarrels and contentions reached such a point that, only a few days later, the husband himself was expelled from the house: but all these things have occurred in the case we are discussing, and indeed, the parties themselves assert under oath that the marriage was not consummated, witnesses testify to the truthfulness of the parties, and expert physicians recognize the signs of virginity in the woman: therefore, there is no doubt that the marriage, about which we are speaking, must be considered as not consummated by all. After these things, whether there are causes for a serious dispensation does not require demonstration. The aversion of the souls is evident. Reconciliation is declared impossible by all. The danger to the souls of the spouses is clear

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from the very mention of divorce. For, according to civil law, they could not be joined in marriage again, or they would be forced into perpetual continence, which is difficult for young people, or they would be exposed to the danger of becoming infamous (1). To avoid seeming to assert this gratuitously, I will quote the words of Madame Blum, who says: "One of these young people recounted... as the servant of Mr. Gaucher, that he had taken this woman for her money." Monsieur Paivre agrees, saying: "From all the conversations I heard, I concluded that Mr. Gaucher married his wife not for her, but for her money."

[*Latin ed. p. 348*]

348. PARISIEN. Concubinatus, according to civil law, or true adultery before the Church. Hence, it is the case that, as testified by the witnesses Conscio, Perez, Clericato, Pignattello, and even the Sacred Roman Rota, "in cases seeking a dispensation, it is generally the case, and it can be adduced, that what pertains to the safety of souls is considered." Therefore, you, venerable judges, implore with the highest prayers that you would deem it fitting to pronounce this judgment, namely: "Considering all things, the Most Reverend [authority] should grant a dispensation concerning a marriage that is valid but not consummated, in this case."

OPINION OF THE THEOLOGIAN. The Consultor stated: "Since it is not certainly known that the marriage between Aemilius Gaucher and Rachel Clairville has remained only valid, there is no basis for a dispensation. In order for an apostolic dispensation to be granted, the principal condition is that the marriage must never have been consummated. All theologians and canonists agree on this point, although they may disagree on the reasons given. For there is a different nature to a marriage that is simply valid, and another to a marriage that is consummated, concerning which Divine Law decrees that what God has joined, man must not separate. Just as the Word, which was once taken on, is never abandoned, so too, a husband never abandons his wife, and he cannot break the bond he has contracted with her, and to assert that this can be done by human authority, as Ledesma states, is an error in faith. Salmant. Tract. I, X, chapter IV, question III. Therefore, the practice is first to diligently investigate whether the marriage has remained valid, and then to examine the reasons that suggest a dissolution of the marriage. With these things established, I immediately inquire whether there are certain arguments that prove that the marriage has remained valid. Rachel and Aemilius are fully in agreement in asserting the non-consummation of the marriage; however, they disagree in giving the reason for this defect; for Rachel offers one reason, and Aemilius another. I would have greatly preferred greater agreement between them in their sworn testimony, and not only in affirming the lack of consummation, but also in assigning the cause of the defect, because if they are at odds with

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each other on a matter of such importance, their... ”

[*Latin ed. p. 349*]

PARIS. 349. The confession, which is of the greatest importance in these cases, loses its strength and validity, or at least exhibits suspicion that it is not entirely true, and does not deserve absolute credence. This was certainly my conviction when I read the accounts, which reveal a clear and evident contradiction between what Rachel says and what Aemilius reveals, although they do not touch upon the substance of the matter, but rather the manner. I consider it opportune to briefly explain this contradiction, so that the Fathers, having become more certain, may judge whether credence should be given to Rachel and Aemilius, who assert the absence of conjugal relations. Rachel, in the written statement presented to the Most Reverend Father, uses the word ”incontinence,” saying: ”If, from the very beginning of a marriage so prematurely troubled, there arises a strong presumption that there were no sexual relations between husband and wife, on the other hand, she affirms with truth that they did occur, and could not have occurred at any time during their common life.” Aemilius uses the same word in his letter to the Parisian court, but he readily admits that he lacks the arguments to prove the absence of conjugal relations: ”Is it my fault if the [physical] evidence no longer exists? Must I therefore bear the consequences of the misconduct of the one who was supposed to... remain faithful to her beliefs, and to the principles of morality?” This is the prologue to a series of contradictions, which will later appear more forcefully and clearly. Rachel, in her confession, demonstrates that she suffers from jealousy, a lightheartedness of spirit, and fickleness. From a simple change in Aemilius’s expression, she argues for his changeable nature: ”His physiognomy was very variable.” She believes that Aemilius’s mother gave her consent to the marriage, in order to improve her son’s prospects. ”I believe that Madame Gaucher wanted to improve her son’s situation.” She suspects that Gaucher did not want to accept the obligations attached to marriage, in order to indulge in a more free life. ”I think that Monsieur Gaucher did not want to contract the obligations.” She adds that he never gave her any sign of love: to the point that, while she showed that she desired him, Aemilius repelled her, and indeed, not once, but...

[*Latin ed. p. 350*]

350. PARISIEN. ”Quotiens hoc dicebat: ’Omni tempore cum eum osculari volebam, me repellebat’.” Hinc matrimonium consummatum non fuisse aperte fatetur; quinimmo, etiam experimentum defuit: ”Gaucher numquam ad me accedere conatus est, ergo nulla temptatio ad consummationem matrimonii fuit.” Interrogata, cui causae non consummationem coniugii adscribat? Defectui amoris respondet, et etiam contemptui uxoris suae, cum ipso die nuptiarum, erga amicum, sollicitudinem suam

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ostenderet. Nunc audiamus Aemilium. Ipsus quoque coniugium non consummatum fuisse affirmat; sed experimentum consummationis ausus non est negare. In verbis eius: "Pendant les 8 jours, j'ai partagé le lit coniugai, et demandé tous les soirs l'accomplissement du devoir conjugal: mea uxor, si ad sententiam meam, ad consummationem matrimonii apta erat, sed in his primis conatibus, semper resistebat, vel timore, vel mala voluntate. Omni tempore cum me ad se appropinquare volebat, me repellebat, post lamenta valde expressa." Quaerenti, cur non fuerit consummatum? Respondet Aemilius, id tribuendum esse aut pravae voluntati uxoris, aut melius, defectui naturali, quem se advertere fatetur. "Defectus conformationis consisteret in eo quod vocant 'barre,' et quod esset developmentum nimirum magnum ossium pelvis, et operationem requireret." Ex actis, nemo non videt contradictionem inter ea quae Rachel affirmat et ea quae profert Aemilius. Nullum experimentum Rachel admittit, sed Aemilius non negat. Illa defectum consummationis adscribit negligentiae Aemilii; hic deformitati partium genitalium uxoris. Mentitur illa, ut videbimus postea; verum non dicit Aemilius, quia doctor Ferrand partes genitales Rachelis affirmat esse bene dispositas: "qu'elles sont bien conformées." Ex utriusque confessione, nulla conclusio elici poterat; sed cum consumptum fuisse affirmant, ex hoc argumento...

[*Latin ed. p. 351*]

PARISIAN. 351. Then the matter is brought forth, which cannot be more strongly desired. Aemilius says: "For eight days, I shared the marital bed and requested the fulfillment of the marital duty every night." Rachel affirmed, saying: "We shared the same bed." However, sleeping together establishes a presumption of sexual intercourse. *Corpus Iuris Civilis*, Book 1, Title 16, paragraphs 45 and 46. Indeed, Zacharias adds that, since carnal intercourse cannot truly be proven, but is only proven through conjectures and presumptions—proven by appearance, by laughter, by conversation, by the place arranged, by admission into the house at night... but all of these are far less weighty than that which is presumed from sleeping together in one and the same bed; indeed, this pertains to actual proof... perhaps not conjecture, nor presumption, but full proof of intercourse. And the Roman Rota of Nullities supports this, January 19, 1646. It is clear that the burden of proof lies upon the one denying: Book 4, Title 11, Question 2, paragraph 13. As it seems to me, full proof is derived from sleeping together. Before the Council of Trent introduced the impediment of clandestinity, the presumption of law was regularly derived from sleeping together, excluding any contrary proof, from chapter 30 on betrothals, and 6 on conditions, appended. So great, and so powerful was the force of proof in the act of sleeping together, that it could not be concealed by any evasion. Therefore, Validi presents a very strong argument, which would be admissible in the external forum, and which both right reason dictates and canon law con-

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firms; as is evident from the chapter on Presumptions, where Alexander III ordered a divorce to be granted based on this presumption. However, since presumption must yield to truth, it must now be considered whether, in this specific case, certain arguments arise that would dispel this presumption. Indeed, it is not dispelled by empty arguments, or words spoken, but by the fact itself. For who would easily believe both parties asserting, even under oath, that they did not meet in any way, when sleeping together has been admitted, especially if they disagree in assigning the cause of the lack of consummation?

[*Latin ed. p. 352*]

352. PARISIEN. The union of one with another should violently inflame the concupiscence of both, and in this single case, the effect is considered wicked in unmarried persons, but honorable in married couples, when it can be proven that the parties did not contract concupiscence, which, after the sin is removed, remains for the struggle. Therefore, from their denial, confirmed by oath, the presumption of consummation is not dissipated, but remains in its full force. The consummation alone can be proven by physical examination, which was indeed performed by experts; however, this examination does not offer any certainty, only that the marriage remains valid. I considered the written testimony of the doctors, and even that confirmed by two witnesses, to be carefully considered, and from it, I could not obtain that certainty which is necessary in a matter of such importance, in order to legally declare the non-consummation of the marriage. One, Cancalon, in his written testimony, affirms that he found all the signs of virginity in Rachel. He found these signs in "the narrowness of the vulva, the absence of cicatricial caruncles, and the very slight development of the labia." He states that he expects little or nothing from the hymen, "which is often absent, and sometimes illusory," although others may say otherwise. Whatever may be the reason for this expert's opinion, let us see if, from the circumstances that he notes, we can obtain something certain regarding Rachel's virginity, concerning the non-consummation of the marriage. However, it is not from the narrowness of the vulva, nor from cicatricial caruncles, because, as Zacharias rightly observes in this matter, it is difficult to know if a union has taken place for a long time. "For although the violation, and the destruction of the pannicles and caruncles, and even of the uterine walls themselves, may have occurred at the first act, if the woman abstains from intercourse thereafter, they cohere again, mutually, over time, even with the blood that flowed at the first intercourse, so that they sometimes present a greater constriction." (Lib. IV tit. 1, q. VIII). And if he found the labia to be very slightly developed, it is not surprising, since

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the union has been performed only once or twice.

[*Latin ed. p. 353*]

PARISIAN. 383 Furthermore, he himself, although claiming to have found signs of virginity, does not deny the absence of anatomical evidence. "I have observed that there is... often no anatomical proof, and sometimes it is illusory, of a hymen, etc." Doctor Ferrand confesses to having found the hymen, which appeared intact. "The hymen... is visible, and appears intact." Doctor Boucquoi states, "There are no myrtiform caruncles," which are "indices of the rupture [of the hymen]." Therefore, the hymen is intact. - From the integrity of the hymen, virginity is inferred, unless experts indicate otherwise, and this occurs irregularly. "Marriage is considered valid only if the hymen, which closes the vagina, is intact... Therefore, the Sacred Congregation rightly holds that marriage is not consummated if the hymen is intact, unless another fact is established by the examination and testimony of doctors." (Gasparri, *Tractatus Canonici de Matrimonio*, n. 1065). And another fact indeed appears to be established from the examination made by Doctors Boucquoi and Ferrand. For he, describing the natural disposition of the hymen, found it to be slightly developed and penetrable, from which he concludes that, without rupture, intercourse could have been completed. "The hymen... allows the orifice to remain permeable, which easily allows the introduction of a finger, and... the consummation of marriage without... rupture." He states similar things. Despite the integrity of the hymen, both hesitate, and do not dare to say whether the marriage was consummated or not. Both found signs of virginity, but when an instrument (a pessary) was applied, and it was possible to penetrate therein without rupture, they believed that intercourse could have been completed. Hence, both, expressing their opinion, confess that no conclusion can be drawn from this. "Its presence (the hymen) does not allow one to draw conclusions regarding the non-consummation of the marriage." At most, it can be presumed that the marriage was not consummated, but not "certainly," since there are no certain physical proofs: "in the absence of certain physical proofs." However, we are seeking certainty here, and we cannot be content with a mere presumption.

[*Latin ed. p. 354*]

We are in Paris, and we must not, given the fact of the consummation, allow a stronger and more violent presumption to militate against the completion of the marriage. Therefore, on one hand, we have arguments that suggest that Aemilius and Rachel did not agree. On the other hand, it cannot be said that Rachel possessed all and each of the qualities that would still declare her a virgin. Two experts dare not affirm that the marriage was not consummated, and they say that it is probable, and that it can even

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be presumed. Therefore, we are in obscurity. There is one argument that overcomes all others, namely, the consummation, from which a violent presumption of copulation is derived. This presumption is not overcome by the confession of the spouses, which is found to be discordant, nor by the instrument (pessary) that was applied to Rachel, because it increases the doubt, since the width of the vagina can be attributed to the instrument, and to the copulation having been performed one or the other time. Therefore, since we are in doubt, let us not say that it is necessary to petition the Most Holy [Father] for a dispensation, which has no place here. "For it is more tolerable against the laws of men to let the married go, than to separate those who are lawfully joined together against the laws of the Lord." (Cap. Licet 47, de Test, and related passages).

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE BY OFFICE. After the customary treatments of marriages and the prescribed denunciations have been made, the matrimonial bond was legitimately and freely entered into on August 5, 1884, before the parish priest of the town of Charenton, in the archdiocese of Paris, between Rachel Solange Claire ville, then aged 30, and Abel Aemilius Gaucher, then aged 25. But the accustomed life of the spouses, which was immediately instituted among the bride's parents, lasted for a very short time. Indeed, futile questions were raised between the bridegroom and the bride's parents, or even grew on the very day of the wedding feast, so that the marital dwelling established with them caused the husband to be forced to abandon the bride after nine days from the beginning of married life. Nevertheless, the same man returned several times, at least to speak with his wife; but since he was repeatedly rejected at the very entrance to the house with insulting and threatening words, he devised a plan concerning the bride.

[*Latin ed. p. 355*]

PARIS. 355, on his way to meet his parents-in-law, encountered them on the road. After unsuccessfully requesting permission to speak with his wife, he struck her and her parents with a stick, not lightly. A lawsuit was then initiated before a secular judge, not only for the offense of causing injury and for the requested separation of the spouses, but also for a divorce action that had been brought. This lawsuit ultimately resulted, at the woman's request, in a judgment on April 13, 1892, which directed that the marriage be dissolved. This decision caused Rachel to focus all her energy on denouncing the consummation of the marriage, and she petitioned the Supreme Pontiff to grant her a dispensation from the marriage, considering it valid but not consummated. The husband, however, who desired nothing more than to break the bonds of marriage, and who had refrained from pursuing the matter in court because he had been informed that a physical examination of the woman would be necessary for that purpose, gladly embraced his wife's intention and devoted himself to achieving the

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same result. Two learned consultants were consulted, who reviewed the records of the case. One (a canonist), although adhering to the most fundamental principles and acknowledging the most serious contradictions between the spouses, which substantially affect the very assertion of the marriage's lack of consummation, and although not denying that the examination of the woman's body by physicians could not definitively prove the lack of consummation, nevertheless ultimately granted indulgence to the wishes of the spouses. The other consultant (a theologian) reached this conclusion: "On the one hand, we have arguments that suggest a simple presumption that Aemilius and Rachel did not cohabit. On the other hand, it cannot be said that Rachel possesses all and every characteristic that would demonstrate that she is still a virgin. The two experts do not dare to affirm this, and they state that it is probable, and indeed can be presumed, that the marriage was not consummated. We are therefore in a state of uncertainty. There is one argument that outweighs all others, namely, COHABITATION, from which is derived the VIOLENT PRESUMPTION of COITION." This presumption...

[*Latin ed. p. 356*]

356 PARIS. is not overcome by the confession of the spouses, which is found to be discordant; nor by the instrument (pessary) which is applied to Rachel, because it is recognized to increase doubt, since the *LATITUDO VAGINAE* can be attributed to either the instrument or to a *COPULA HABITAE* once or twice. Therefore, when we are in doubt, may it be far from me to say that one should petition the Most Holy [Father] for a dispensation, which has no place here. I adhere to this conclusion with all my heart, since the points of reason are decisive upon which this conclusion is based: and lest I seem to be repeating the same thing, I will only touch upon a few things for the confirmation of this matter. And first, it is helpful to recall the most common rule of law in chapter *Super, eo 5 De eo qui eo gn. consang. etc.*, which states: "We respond to your fraternity that, on account of the confession of those [spouses] alone, or even a rumor of cohabitation, they should not be separated, since sometimes some people wish to conspire against marriage with each other... But the rumor of cohabitation is not to be judged so strong that, unless reasonable and trustworthy proofs are added, it can rightly invalidate a marriage contract." But if one cannot even believe the sworn testimony of both spouses in agreement, what then in a case in which the spouses, with great effort striving against the bond of marriage, while undergoing a judicial process, throw themselves into the greatest contradictions, which are reported by a theological consultant, and which substantially affect the very fact of the asserted incontinence? Moreover, what if the husband, having previously refrained from promoting such a judgment because of the need for a bodily examination by the woman, later, willingly admitting the lack of virginity

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in his wife, presumes to explain this by accusing the woman of a dishonest life, which he gratuitously imputes to her? Thus, he himself wrote to the court in Paris: "Is it surprising, gentlemen, that this material proof is lacking in the case that concerns us? No, certainly. If it had been permitted me to seek justice in 1884, when all sexual relations were denied to me by my wife, certainly at that time you would have found the material proof..."

[*Latin ed. p. 357*]

PARISIAN. 357. It is true that you demand proof today. But nine years have passed since these events, and what could have been proven then, cannot be proven today. Why? Must I insist on certain hurtful and immoral deductions? But must the consequences of the misconduct of one party be borne by the other? The objection raised above, concerning the rule of law, is futile, as is evident in *mp. Laudabilem* 3, *De frig. et male f.*, where these words are read: "If, however, both confess that they have never known each other, with the seventh witness, either relatives or neighbors of good reputation (if relatives are lacking), having touched the sacred Gospels, then each, under oath, shall say that they have never been united in carnal union, and then it seems that the woman may proceed to a second marriage." For the cited passage concerns a man who is reduced to a useless stump, and specifically addresses the case of impotence, as is clearly apparent not only from the three-year experiment immediately preceding the prescribed text, but also from the words immediately following: "But if he takes another wife, then those who have sworn are guilty of perjury, and, after having performed penance, they must be compelled to return to their former marriage." Furthermore, it is pleasing to sow discord between spouses, and to encourage the woman to deny the truth, while the man is encouraged to lie, so that their cause, already desperate, may be freed from the most difficult of trials. For it would be most unjust if what is not permitted to two people acting in agreement were permitted to only one of them. Furthermore, the arguments are irrelevant, which would rather command the woman to give testimony than the man, who is otherwise motivated by the same desire to break the bonds of marriage, and who, like her, has the testimony of the seventh witness. However, if the woman seems to have a stronger case in the sworn examination, no less are the improbabilities and deviations from the truth apparent in what she recounts, as a consulting theologian observes. Finally, concerning the physical examination of the woman, it is sufficient to recall the case of - Parisian, dispensation.

[*Latin ed. p. 358*]

358. PARIS. Concerning the marriage between Carolina de Oliveira and Julian Gavinzel, – discussed before the Sacred Office in plenary sessions on July 21, 1888, and September 7, 1889, under the usual formula for inquiry – whether it is necessary to consult with the Most Holy Father regarding

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a dispensation from a marriage that was consummated and not consummated, in a case where a negative response was given, even though expert physicians, who, at the mandate of the judge, had examined the woman's body for many years, testified to her virginity to a greater extent than in the present case. For the sake of brevity, I will mention only what was then testified to by one of the physicians, who also testifies now, that is, Doctor Angelo Ferrand. This physician, appointed by the judge, wrote at that time: "The examination of this person (Carolina de Oliveira) revealed nothing abnormal in her overall appearance... The external examination of the sexual organs presents nothing abnormal. The labia have their natural dimensions, and the vulva, as a whole, corresponds well to that of a virgin woman who has not given birth or even conceived. When the labia are raised, an hymen is visible, which appears to be intact, but not impermeable. The orifice, which is left open in the middle, appears regular and sufficiently dilated to allow the easy introduction of the index finger, which can thus penetrate the vagina without real difficulty, despite some contraction of the constrictor muscle. This examination is sufficient to conclude: that the conformation is normal and certainly allows for marital intercourse; that intercourse could have occurred without any manifest defloration." However, when the same physician was appropriately questioned by the judge, he revealed his thoughts, under repeated oath, as follows: "Physically, one cannot affirm the non-consummation of the marriage. MORALLY, ONE IS INCLINED TO CONCLUDE THAT THE CONSUMMATION WAS NOT EFFECTED." Given that these matters are more serious than those now reported by the aforementioned Doctor Ferrand and another expert, Bucquoy (official documents, pages 48 to 52), I have no doubt that the aforementioned doubt will be dismissed with the same NEGATIVE RESPONSE.

[*Latin ed. p. 359*]

PARIS. 359 Having considered all these matters, the question was raised as to how to proceed regarding the doubt: Whether it is necessary to consult with the Most Holy [See] concerning a dispensation from a marriage that is valid but not consummated in this case.

RESOLUTION. The Sacred Congregation [of the Holy Office] discussed this matter on August 11, 1894, and decided to respond: Affirmative.

FROM WHICH THE FOLLOWING ARE DEDUCED:

I. That moral certainty regarding the lack of consummation of marriage is sufficient to grant a dispensation, as demonstrated by the authority of Doctors and the jurisprudence of the Sacred Congregation.

II. That complete proof of virginity, as stated in chapter 4 concerning the three [required elements], must consist of: namely, the sworn testimony of the parties, the examination of the woman, and the testimony of seven

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witnesses.

III. That when a certainty, defined by law, is not present, which is required and sufficient to grant the grace of a dispensation, no more certain rule can be prescribed than that it be such as would satisfy a prudent man, considering the circumstances that recur.

IV. That, as stated in chapter 4 concerning frigidity and malice, a dispensation can also be granted solely through the confession of both spouses, corroborated by the testimony of seven witnesses, to the extent that each spouse swears that they have never become "one flesh" through carnal intercourse.

V. That there is no lack of moral certainty in this matter; because the sworn testimony of the parties is supported by the testimony of seven witnesses, and by the physical examination of the woman herself.

VI. That marriage is to be considered only valid but not consummated, whenever the hymen, which covers the vagina, remains intact; because from the integrity of the hymen, the inviolability of virginity is deduced.

[*Latin ed. p. 360*]

360 BETWEEN THE RIVERS. THE PARISH OF PRIVATION. August 11, 1894. Session 24, chapter 5, concerning Reform. SUMMARY OF FACTS. Joseph Franchi, having professed as a priest of the Order of Friars Minor Observant under the name of Father Didacus, remained in Interamna. This was due to the subversive laws of the Italian government concerning religious orders, which led him to leave the cloister and obtain a decree of temporary secularization. Meanwhile, the parish of Saint John the Evangelist in that city became vacant on April 5, 1885. After repeated announcements and calls for candidates, no one appeared, due to a lack of priests. Therefore, the Bishop, knowing that the priest Franchi resided in his city and was not engaged in any office, invited him to take charge of the parish; and indeed, after a preliminary consultation, he approved of this. However, because the priest Franchi, due to the decree of only temporary secularization, could not accept the benefice with an inalienable title, he presented a declaration to the Bishop: "I declare and promise, under oath, by touching my breast in the manner of a priest, to administer the Parish of Saint John the Apostle and Evangelist at the discretion of the Bishop and of the superiors of the Franciscan Order, until I obtain from the Apostolic See a brief of perpetual secularization." Furthermore, the Bishop, wishing to withdraw the revenue of that parish from the hands of the royal sub-economus of vacant benefices and to provide a suitable support for the administrator of this parish, granted him a Bull of Institution for the benefice, which was followed by what is called the Royal Approval. Thus, he was legitimately admitted to the possession of the parish and its goods, with the following clause added: "However, until he obtains from the Holy See a brief of secularization, since the Reverend Franchi is from the Order of Friars Minor

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Observant, he intends to retain and possess the parochial church of Saint John the Apostle and Evangelist at the discretion of the Holy See and of the Most Reverend Bishop."

[*Latin ed. p. 361*]

INTERAMNEN. For the time being, Interamna exists, as evidenced by the decrees on this matter issued by the Most Holy Congregations. The actions of this parish priest did not entirely satisfy either the Bishop or the faithful, and therefore, the Ordinary took care to admonish him with paternal warnings on more than one occasion. Perhaps because of the complaints of the parishioners and the Bishop's admonitions, fearing that he might be removed from his office, the Religious, Franchi, from the Congregation of Saint [insert name of Saint here, if known, otherwise leave blank], requested a decree from the Holy Congregation concerning the discipline of Regular Canons, seeking a decree of perpetual secularization, so that, upon fulfilling the conditions stipulated in the act of accepting the parish, he might become immovable. He obtained this through the following rescript: "The Holy Congregation concerning the discipline of Regular Canons, by virtue of the powers granted to it by His Holiness Pope Leo XIII through the Prefect of Rome, having considered the information and the vote of the Provincial of the Order, as well as the testimonies received from the Ordinary of Interamna, benignly grants to the aforementioned Ordinary, that – provided that a suitable provision has been made for him, either through a proper endowment or through other sufficient means of support – excluding any civil pension – he may grant him permission to remain outside the cloister, having relinquished his religious habit, for as long as he lives; provided, however, that he observes the essential obligations of his vows as much as possible; that he bear the religious habit as a visible sign within himself; and that he obey the Ordinary of the place in all things, also in virtue of the solemn vow of obedience. Contrary to any constitutions, apostolic ordinances, or other regulations whatsoever, this decree is of no force unless it is immediately brought to the attention of the Provincial, and unless its execution is requested within six months. – Rome, July 31, 1888." However, Franchi, with an unstable mind, failed to fulfill the condition stipulated in the rescript, namely: "This decree must be immediately brought to the attention of the Provincial, and unless its execution is requested within six months, it is of no force," for he did not present it to the Provincial, nor did he request its execution within six months; therefore, the decree became void. But he clearly indicated his intention not to use the rescript further, in the year 1890, through letters in which he declared to the Bishop his intention of renouncing the care of

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souls, so that...

[*Latin ed. p. 362*]

362. INTERAMNEN. He again surrendered himself to the religious community. The Bishop, who had been concerned about his vows and even his notations, received his clearly expressed intention to renounce [his position] as an actual renunciation, and he wrote to the priest Franchi, praising and accepting his will, and granting his petition, namely, to retain the annual sum of 180 [florins], to be paid by the economist who would administer the parish in his stead. Franchi accepted the Bishop's decision without contradiction, giving a procuration for the administration of the goods to the spiritual economist appointed by the Bishop, and leaving the parochial house, he entered the religious house at Stroncone. However, he soon began to find religious life distasteful, and he began to consider taking over the administration of the parish of St. John again; which he accomplished by breaking into the parochial church, taking the keys to the sacristy of the church, and instructing the spiritual economist to abandon the parish; because he alone was, in the eyes of the Church and before the civil authorities, the recognized parish priest. Then, the Bishop, lest he yield to such audacity, nor leave such a grave scandal unpunished, issued the following decree: "Having considered, and exercising our ordinary authority, we declare that the religious Father Diego, formerly known as Joseph Franchi, has, by law and fact, been removed from all administration, both temporal and spiritual, of the parish of St. John the Evangelist in this city." Nevertheless, the priest Franchi refused to peacefully acquiesce to this decree, so the Bishop ordered that it be communicated to the regional sub-economist of vacant benefices, who was to consider the parish as vacant. Then, deprived of all means of resistance, the religious Franchi sought help from the civil authorities, but to no avail; hence, he appealed to the Sacred Congregation of the Council, requesting that no decree of the Bishop be declared valid; but on May 7, 1892, the petition was rejected, and the insistent petitioner was informed in writing: "In decrees, and no further petitions will be received." Nevertheless, the priest Franchi, not acquiescing,

[*Latin ed. p. 363*]

AT AMNEN, die 24 Septembris, decreta praedicta iterum confirmata sunt. Sed, non desistens, aliae preces obtulit, et alium libellum praesentavit, in quo omnes rationes controversiae exponebat; et, cum aliqua, quamvis tenuissima, spe probabilitatis, decretum datum est die 17 Decembris 1892: "Praevio deposito 300 librarum pro expensis – Scribatur in folio – et hoc notificetur Episcopo juxta formam." Hoc decretum paulisper eius audaciam frægit, unde alium libellum praesentavit, significans se a iudicio destitutum si aliqua pensio ei assignaretur sub beneficio parochiali controverso.

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Episcopus recusavit huic petitioni; quamobrem, omnis spes amisso, Orator iterum ad iudicium confugit.

DISPUTATIO SYNOPTICA

DEFENSIO EPISCOPI.

Episcopus, in sua defensione, in litteris Sacrae C. O. datis, circumstantias praecipuas rei recollit, ex quibus, simpliciter narratis, confidit meliorem demonstrationem suae legitimae agendi rationis deducere. Nam, observat, ipsum iure merito potuisse privare sacerdotem paroeciae Franchi, quam ad eius nutum retinebat. Non enim evasit inamovibilis rescriptum perpetuae saecularizationis, quod nullius est valoris, quia numquam executioni demandatum fuit. Executio vero defuit in primis ex parte ipsius Franchi, qui intra sex menses non obtulit rescriptum Ministro provinciali, ut patet ex litteris eius diei 17 Decembris 1891; et ex parte Episcopi, qui numquam cogitavit de executione, nisi petitus ab ipso Oratore, quam, etsi petitus non concessisset, ob malam agendi rationem sacerdotis Franchi.

DEFENSIO PAROCHI.

Actoris ad iura tuenda procurator constitutus, omnino ostendit Episcopum per suum decretum spolium commisisse. Ex narratione factorum, ait ille, duo clare emergunt: nempe 1° realem possessionem beneficii parochialis favore parochi; 2° spoliationem violentam bonorum beneficii parochialis ab Episcopo factam per decretum extraiudiciale diei 21 Decembris 1891. Spolium enim observat...

[*Latin ed. p. 364*]

364 INTERAMNEN. The patron, not only protects, when someone is expelled from his possession by private will and force; but also when, without due consideration of the cause and without observing the order of law, a judge expels someone from possession, without being summoned or heard. In this case, what is called a legal dispossession occurs; because then the judge, proceeding contrary to the norms established by law for judgments, is considered as a private person, and the force with which he deprives someone of possession is equated to the force inflicted by a private individual. However, the Most Reverend Bishop of Interamnensis, without summoning the parish priest, without a process, forgetting both natural and positive law, decided to settle a dispute relating to the institution and the subsequent endowment of the parish of Saint John. Therefore, the Bishop, by decreeing that he declared, with ordinary authority, the parish vacant in law and in fact, committed a true legal dispossession. The procurator, having proven the legal dispossession, states that his client

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must be completely restored to possession of the property, and cites c. VII, tit. 13, lib. 2 Decretalium, which, he says, applies literally to this dispute. The Pope Alexander III writes: "We have received a petition from a Reverend Cleric that you have deprived him of the church of Werfort without judgment. Because it does not befit your honor to deprive clerics of your jurisdiction of their benefices without a manifest cause and reason, to whom you ought to provide paternal assistance: we command that you restore to the aforementioned cleric the aforementioned church with its revenues, which you have received, and allow him to possess it in peace." The Reverend Cleric, then deprived of the church of Werfort, petitioned the Pope; now, the parish priest of Franchi, deprived of the church of Saint John in Interamnensis, petitions the Sacred Congregation. The Pope ordered the cleric to be restored, because it does not befit a cleric to be deprived without a manifest cause and reason; similarly, therefore, the decree of deprivation of the parish of December 21, 1891, should be annulled, and the parish priest should be restored, above all. And, the advocate continues, just as the Pope, in the cited chapter, after the legal dispossession has been remedied, says that the Bishop can proceed with the judgment, so it is conceded that the Bishop of Interamnensis, after the deprived party has been fully reintegrated...

[*Latin ed. p. 365*]

INTERAMNEN. In the year 365, if one holds a benefice, he may institute a lawsuit against a parish priest. Indeed, the advocate protests that his client in this court of justice is not seeking to determine the merits of the controversy, but solely to demand restitution to the original state of affairs. Restitution to the original state of affairs is not hindered, the advocate observes, by a new circumstance arising in the pending litigation; namely, the institution of another parish benefice of St. John. The Bishop of Interamnensis could not ignore the ecclesiastical sanctions regarding the pending litigation. For, while the litigation is pending, anything attempted to prejudice the complaining party must be purged and restored to its original state; so that, before restitution, no further proceedings can be taken in the judicial acts, and whatever is done in these acts while the litigation is pending shall have no value in the progress of the lawsuit. But this attempted act was made after, with the consent of the Bishop of Interamnensis, the controversy appeared in writing on the record of the case, which should have preceded the citation. Furthermore, the advocate argues, the new institution cannot be valid, because the benefice is neither legally nor factually vacant. For the parish priest still remains in possession of the parochial house, which he in no way wishes to leave. This possession refutes the assertions of the Bishop, who claims that there is a notorious renunciation of the parish by the priest's return to the cloister. Moreover, to deny the abandonment of the parish by the priest, the advocate cites

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another fact, namely, a letter from the Provincial to the Bishop, in which it is stated that the priest informed Father Guardian that he had been granted perpetual secularization, and that he was a priest with bulls, recognized by the Government, and abhorred by the religious Order from which he was rejected, at the same time by the Provincial. After this, the advocate confesses that he does not understand how, a few days after this letter, the Bishop dared to assert in the decree of deprivation that the priest had abandoned the parish with the intention of returning to the religious order, which he did indeed do, and was received again into obedience. It is true that the priest spent some time during the summer months in the convent of the town of Stronconi, but not beyond...

[*Latin ed. p. 366*]

366 INTERAMNEN. He sent to fulfill parochial duties, either personally or through another; therefore, it seems contrary to truth that the parish priest remained in the convent of Stronconio, as in the place assigned to him by his superiors. To this end, the testimony of Father Guardiani, of that same convent, is presented. With these observations, the defender states, it is superfluous to speak of a presumed renunciation, since it has become clear that the will to renounce never existed. Furthermore, the attorney notes, the fact of recognition of the new institute by the Italian government does not preclude the remedy of restitution. Recognition does not have effect when the rights of a third party are in dispute; as is expressed in the formulas of this recognition: "salvo le leggi dello Stato, ed il diritto dei terzi" [saving the laws of the State, and the right of third parties]. However, in this case, recognition cannot stand, as the Supreme Council of the Italian Kingdom deems that the vacation of the benefice does not exist, as long as an end has not been given to the appeal of the parish priest to the hierarchical ecclesiastical authority. Finally, the advocate, pursuing his arguments, seeks to better demonstrate the validity of the claim. He observes that, although secular benefices should not be conferred upon Regular clergy, this rule has its exceptions, as happened in the case in which a Religious from France was called to a parochial benefice due to a lack of secular priests. Furthermore, he subsequently obtained a decree of perpetual secularization, behaving entirely as a secular priest in the administration of the parish. Therefore, he argues, the Bishop's assertion that he never ordered the execution of this decree of secularization is of no value, since it was conceived in a commissary form. For, the attorney replies, the decree was conceived not in a commissary form, but in a gracious form, since it truly was gracious; and it did not require any execution for its validity, because no judicial process was required to prove the parish priest's possession in the parish; since it is well known that in such matters, a written judgment

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is not necessarily required, but any expression suffices.

[*Latin ed. p. 367*]

INTERAMNA. 367 superioris voluntatis; et Episcopus qui non recusavit, tacite consentire videtur, quia versamur in favorabilibus. Nec, prosequitur orator, Episcopo iuvat dicere parochum conditionem subscripsisse, ad obtinendam, nempe, legitima perpetua saecularizationem; nam in casu, conditio tamquam impleta haberi debet, cum ille cui onus incumbit, omnia posuit ut impleatur. Etiam si impletio conditionis in dubio revocari posset in casu, non ex hoc sequitur, Episcopum spoliare potuisse parochum, quia conditio tempus indeterminatum respiciebat, et Episcopus ante privationem facere debet parocho interpellationem ad eum in mora constituendum; et eo plus, quia conditio retinendi beneficium ad nutum, copulativa erat, videlicet ad nutum Sanctae Sedis et Episcopi Interamnae existentis. Tandem patronus, postquam assensit, Episcopum non posse in sui favorem invocare Instructionem Sanctae Poenitentiariae datam anno 1867, quae non ad casum pertinet, potius pro suo cliente vindicat beneficium praescriptionis ex triennali possessione, concludendo controversiam, non posse mansisse Parochum, post obtentam saecularizationem perpetuam, ultra alios tres annos in pacifica possessione beneficii parochialis. Ipse verus et titularis parochus se praebuit, talis fuit Episcopus, ut verus parochus ab omnibus cognitus fuit. Ergo, regula 35 Cancellariae Apostolicae de triennali possessione ei plane suffragat. Quia haec regula, omnes defectus sanat, ingressu simoniaco excepto. Hisce praenotatis, propositum fuit enodandum, si extraiudiciale Episcopi decretum diei 21 Decembris 1891 sustineatur in casu.

RESOLUTIO. Sacra Congregatio, re discussa sub die 11 Augusti 1894, censuit respondere: Affirmative et amplius.

[*Latin ed. p. 368*]

368 CERINIOLA. ONERUM. August 11, 1894. Sess. 25, cap. 12, de Ref. COMPENDIUM FACTI. The Church of the city of Ceriniola, which was formerly under no jurisdiction, was, by a Pontifical Bull of the year 1812, made a cathedral church of the city of Ascoli Satriano. By said Bull, the following was determined concerning the episcopal seat, namely, that from now on, a total of stable properties, belonging to and legitimately pertaining to the aforementioned College, and entirely free, immune, and exempt from every census, canon, mortgage, and any other burden whatsoever, which yield an annual income of four hundred ducats, of the currency of the aforementioned kingdom, within a period of two years, calculated from the date of the present document; however, with the addition that, until and as long as this assignment is not made, the new Chapter shall be obligated to pay to the Bishop an annual census of four hundred ducats of the currency of the aforementioned kingdom (for the security of which,

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all the assets of the Chapter are specially pledged and mortgaged), which We also perpetually assign by this apostolic authority. At that time, the Chapter, possessing all its funds subject to censuses, assigned to the Bishop properties whose censuses would amount to the sum of 400 ducats, or 1700 Italian lire. However, at a later time, Bishop Todisco Grande, considering this assignment of income to be less in conformity with the Bull of erection, which stipulated that the stable properties assigned to the episcopal seat must be entirely free, immune, and exempt from every census, canon, mortgage, and any other burden whatsoever, instead demanded directly from the Chapter the sum of 400 ducats, in accordance with the intention of the Bull, imposing on the Chapter a subordinate obligation in case the previous obligation is not fulfilled; namely, with the addition that, until and as long as this assignment is not made, the new Chapter shall be obligated to pay to the Bishop an annual census of forty ducats...

[*Latin ed. p. 369*]

GERINIOLEN. 369 Haec ratio solvendi censum ad Mensam episcopalem adhuc perseverat. Sed causa praesentis controversiae fuit, quaestio exorta, an taxa inter alias a Fisco bonis ecclesiasticis imposita trigesimi pro centesimo (30%), subeunda sit a Capitulo vel a Mensa episcopali in casu. Nam Capitulum habens bona stabila hanc taxam iam passum est, semel pro semper, per subtractionem trigesimi pro centenis in summa capitali; Mensa e contra episcopalis, bona immobilia non habens, quotannis hanc taxationem subit in reditibus census capitularis. Iamvero Fiscus taxam directe semper a Mensa episcopali exquisivit; sed si attendamus Episcopi relationem, hactenus haec taxa a Massa capitulari praelevata fuit; ex adverso ex allegationibus canonicorum pateret, taxam ab ipso Episcopo solutam fuisse. Quidquid sit de facto, modo Episcopus contendit, hanc Fisci usurpationem non a Mensa episcopali, sed a Capitulo subeundam esse. Disceptatio Synoptica. Imprimis, Ordinarius repetit praestationem Capituli a sua origine, advertens quod tempore erectionis Cathedralis Ceriniolae ex eius 46 beneficiis 22 suppressa fuerunt, cuius suppressionis reditus pro 400 ducatis Episcopo, pro 600 Seminario, pro aliis 600 Mansionariis assignati fuerunt, residuis Capitulo remanentibus. Insuper notat Ordinarius, canonicalium praebendarum conditionem progressu temporis ditiorem evasisse, quia Seminarium Ceriniolae multis iam abhinc annis non habetur; unde a praestatione ducatorum 600 Capitulum se exemit, nec non quia Canonicorum numero, per leges subversivas, ad 12 reducto, superstitum reditus augeri potuerunt. Dein Episcopus provocat ad Bullae erectionis intentionem quae hanc contributionem Canonicis imposuit, ut Episcopi dignitatem suam decenter tueri valeant. Quocirca, notat praesul, si Mensa episcopalis solvere debeat etiam hanc taxam computandam in libellis 157.08; praeter alias vulgo dictas *di'ricchezza mobile e di mano morta*, non supersunt DEFENSIONES EPISCOPI. Acta,

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Tom. XXVII, fase. CGC XVIII, 24.

[*Latin ed. p. 370*]

370 CERINIOLA. Unless the decree of 984, 34; which is plainly unsuitable for the dignity of the Bishop to be maintained. From the same Bull, he recalls the provision by which it is decreed that the goods assigned to the Bishop must be entirely free, immune, and exempt from any other burden, stating that this was the intention of the Pontiff, so that the contribution of the Chapter should always equal the sum of 400 ducats. The Bishop believes that this obligation of the Chapter can also be derived from a similar case discussed and decided by the Sacred Congregation of the Council on January 20, 1883 (1), concerning the same Chapter of Ceriniola. The matter concerned the division made in 1832 of one parish, then existing in Ceriniola, from which two other parishes were constituted, so that the Chapter reserved the rights of the collegiate church and also agreed to the suppression of 6 prebends, with the obligation of paying to the parish priests an annual sum of 150 ducats, by way of a proper contribution. However, when this contribution was subsequently burdened with the so-called "tax on movable property," the question was raised: Whether the burden of this tax should be borne by the parish priests or by the Chapter in this case; and the Sacred Congregation of the Council responded: Negatively to the first part, affirmatively to the second. Finally, the Bishop notes that one cannot seek any relief or refuge in the revenues of the episcopal cathedral chapter of Ascoli, which, exhausted by taxes and all kinds of burdens, is no less in need. DEFENSE OF THE CHAPTER. On the contrary, the members of the Chapter are no less confident in their own legal right. First of all, they point out that, by the Bull of erection of the Chapter, an obligation was established, namely, to grant to the Bishop certain fixed assets, exempt from any burden, and another subordinate obligation, to pay to the episcopal chapter an annual contribution of 400 ducats. From the circumstances detailed in the specific case, they maintain that this second contribution is being maintained. Therefore, they conclude, the Bull refers to the fact that, in any case, the Bishop should receive the full sum of 400 ducats from the Chapter; but nothing more. (1) You have this question in Vol. XV, 321.

[*Latin ed. p. 371*]

CERINIOLEN. 371 Therefore, if this payment is considered as a debt of the Chapter towards the episcopal fund, they point out that when the debt is fully paid, the debtor has fulfilled his obligation, so that whatever events may occur afterwards, the legitimate sum deposited in the hands of the creditor must be provided, not by the debtor, but by the creditor. Indeed, the treasury operates its appropriation on a sum already paid by the Chapter to the Bishop; therefore, the loss must be borne, not by the Chapter, but by the Bishop. If, however, the Chapter's contribution is to be

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considered rather as a tax, in accordance with the words of the Bull: "A new Chapter, a yearly tax of 400 ducats," etc., the Canons clearly demonstrate that the Chapter is in no way obligated to bear the burden of the tax. For in the celebrated Constitution of St. Pius V, concerning the payment of taxes, it is expressly declared in "Cum onus Apostolicae," that taxes once established, for no reason, can be increased or diminished. Indeed, it is stated in § 4: "We do not wish agreements, whether direct or indirect, which obligate someone to unforeseen events, who is not bound by such obligations by the nature of the contract, to be valid in any way," and in § 5: "We declare that the price once established as a tax can never, for reasons of time or the qualities of the contracting parties or any other accident, be diminished or increased, either with respect to the contracting parties themselves." Therefore, the Canons conclude that the burden of the tax of the Chapter towards the episcopal fund cannot be increased without violating the Constitution of St. Pius V. For although something more may be paid under the title of a tax or indemnity, it is always true that the Chapter's contribution is increased and aggravated. Indeed, they point out that it is only alien to the law that the Chapter should bear the burden of the tax for the Bishop, so that if the disposition of St. Pius V, in the aforementioned Constitution, were to be preserved, the contribution should rather be diminished than increased. Indeed, the Pontiff in the same Constitution, under n. 10, declares: "Finally, we decree that all taxes created in the future, not only in their entirety or in part, but also in their entirety or in part, shall be considered null and void." From this, the Canons deduce that, due to the diminution suffered in their lands through the application of the thirty per cent tax, the same is, in proportion, null and void.

[*Latin ed. p. 372*]

372 CERINIOLA. They considered the right to reduce a previously established tax. Finally, the Canons urged a certain decision of the Sacred Congregation of the Council, given in Cortona, on July 25, 1891 (1), by which the parish priest of Farneta had convened the Chapter of the Cathedral with the intention that the Chapter should pay the parish priest the sum of 77 scudi, which the Chapter was obligated to provide to the parish priest according to a certain agreement, namely the tax commonly called "di ricchezza mobile e mano morta," subsequently imposed by the Fiscal authorities; but the question was raised: Whether and at what time the Chapter of the Cathedral Church of Cortona is obligated to refund to the parish priest and chaplain of Farneta the taxes commonly called "di ricchezza mobile e di mano morta," in the aforementioned case. The Sacred Congregation of the Council decided to respond: Negatively, and furthermore. The Canons praise this response as most wise, and they believe that the proposed controversy should be answered in the same sense. Such are the deductions of the parties; however, something was added by way of

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explanation, to show how two decisions, cited by the parties from different sources, which at first glance seem to be diametrically opposed, can be reconciled. But in truth, if the records of these cases are examined, all difficulty vanishes. For in the case of Ceriniola in the year 1883, invoked by the Bishop, the matter concerned the Chapter of the Cathedral, which, having reserved the revenues of the vestments and other certain revenues of newly established parishes, had assumed the obligation to provide a certain, suitable sum; therefore, the Sacred Congregation of the Council, after considering the question regarding the burden of the tax commonly called "di ricchezza mobile," responded that this burden should be borne by the Chapter. On the contrary, in the case of Cortona, brought by the Chapter, the question was raised whether the Chapter, burdened with a certain obligation towards the parish priest of Farneta, should bear the tax commonly called "di ricchezza mobile e mano morta," subsequently imposed on the parish priest by the Fiscal authorities for these revenues. But from the records of the case, it was clear that the Chapter was bound by this obligation towards the parish priest because of certain goods legitimately granted to the Chapter by the Prince, so that the parish priest had no right to these goods. (1) Recole, vol. XXIV, 294.

[*Latin ed. p. 373*]

CERINIOLEN. 373 but he would possess only that contribution, as a creditor, by right. And the Sacred Congregation of the Council, on July 25, 1891, judged it fitting to respond that the Chapter should not be obliged to bear this tax. With these things presupposed, the following question was to be resolved: Whether the Bishop is obliged to pay the tax of thirty per cent (30%) imposed on the episcopal mensal, or rather, the Chapter, in this case. RESOLUTION. The Sacred Congregation of the Council, after examining the matter on August 1, 1894, judged it fitting to respond: Affirmative to the first part; negative to the second. REGARDING CLERICS AND PRIESTS OF ANOTHER DIOCESE. In past times, complaints of Bishops were not lacking before the Apostolic See concerning clerics who, abandoning their diocese, moved to the City without necessity and without just cause, for mere whim; and in each case, as opportunity arose, provision was made. But in our time, this abuse has increased, and it has appeared to be of greater gravity, especially since the number of priests has diminished in many dioceses; and therefore, the Ordinaries have repeatedly presented requests that this matter be considered. Indeed, both from the ancient discipline of the Church, and especially from the prescriptions of the Holy Council of Trent, chapter 2 of the 21st session and chapter 16 of the 23rd session, concerning reforms, and from subsequent resolutions of the Holy Congregation, it is clear that the Bishops do not lack legal remedies with which they can restrain this freedom of clerics. For it is clearly the right of the Ordinaries, because of the needs of their churches, to

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forbid priests, even though ordained for a benefice, from abandoning their own diocese, and to recall those who have, even elsewhere, and indeed even in the City, obtained a residential benefice through apostolic letters, if they depart without the approval of the Ordinary, and to provide for them from whence they may honestly live in their diocese. This constant discipline is maintained, as is clearly evident, among other things, from the resolution in the case of Reatina, of January 26, 1833.

[*Latin ed. p. 374*]

374 DECREE. Wherefore, the aforementioned requests of the Bishops, recently submitted to the judgment of the Holy Congregation, the Most Reverend Fathers responded that sufficient provision had already been made by the aforementioned sacred canons. Nevertheless, since several Bishops, especially from regions near the City, have insisted on other requests, and the Most Holy Father has earnestly desired that something be specifically determined in this matter, in order more effectively to address this disturbance of ecclesiastical discipline, the Most Holy Pope Leo XIII, after mature deliberation, and in accordance with what he had previously ordered to be published through the Most Reverend Vicar of the City, has prescribed and decreed the following through the Sacred Congregation of Councils:

1. Clerics and secular priests, or even religious, who reside outside their own monasteries, shall not henceforth be able to establish a permanent residence in the City without express permission from the Supreme Pontiff, obtained through the office of the Holy Congregation of Councils.

2. Those who are currently residing in Rome, if they are not bound to reside there by any benefice or office, and have not acquired a residence in Rome by prolonged residence and with the tacit or express permission of their own Bishops, shall, after the expiration of one month from the date of this decree, be obliged to return to their own diocese.

3. No cleric or priest from another diocese shall henceforth be able to be chosen for any ecclesiastical office, or for any other duty that requires residence in the City, unless, in addition to testimonial letters of commendation from his own Bishop, he also presents a permission already obtained from the Supreme Pontiff to reside in Rome; likewise, no benefice shall be conferred upon anyone unless he has obtained the consent of his own Ordinary for this purpose; otherwise, the conferral of the benefice will be null and void.

4. Those who, with the permission of their Ordinary, are engaged in literary studies, or in honest pursuits, or for some other just cause, are residing in the City, shall, as soon as the reason for their temporary residence ceases, be recalled by their own Bishop, and shall be obliged to return to their own diocese, without any frivolous excuse, and especially, given the particular condition of dioceses at this time, they shall not, under any circumstances,

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be excused "with the exception" granted by the Bishop, whether on the basis of studies undertaken or of a pretended need for support. If, during their residence in the City, they do not conduct themselves as befits, they will be...

[*Latin ed. p. 375*]

DECREE 375: Those born within the city limits shall be reported to their proper Ordinaries, and shall be compelled to leave the city. 5. Furthermore, whoever, in any way, does not conform to the present regulations, or, may God prevent it, opposes them, shall, by such action, be subject to suspension from divine services. Moreover, Bishops shall take care of all their clergy equally, and, as is often to be lamented, shall not easily allow them to leave their diocese, those who, either through their manner of life, or for other reasons, exhibit themselves as worthy of reproach or troublesome. Therefore, all these things, His Holiness has commanded to be observed and inviolably kept by all to whom they apply, notwithstanding any contradictions, even those deserving of special mention. Rome, from the offices of the Sacred Congregation, on the 22nd of December, 1894.

A. CARD. DI PIETRO L., Prefect.

SALVATI, Secretary.

FROM THE SACRED CONGREGATION FOR BISHOPS AND REGULAR CANONS.

(1) JURISDICTION. August 24, 1894.

SUMMARY OF THE CASE. On June 3rd of the preceding year, 1893, the Superior General of the Congregation of Sisters commonly known as the "Filles de la Sagesse" in Gallia, proposed to the Sacred Congregation for Bishops and Regular Canons the following questions:

I. Whether and in what manner the Superior General must retain jurisdiction over the entire Congregation in the case in question.

II. Whether the Superior General of the Fathers' Society of the Marianae Islands, elected according to the rules of this Institute, should be appointed to this office in the case in question.

The question, as is more fully explained in the preceding discussion of the case (1), concerns...

(1) See the nature and treatment of this case in the initial proposal in the preceding volume, XXVI, 148.

[*Latin ed. p. 376*]

376 LUÇON. The matter, especially concerning the Bishop of Luçon, within whose diocese the motherhouse of the aforementioned Sisters was located, and the Sisters themselves. The Bishop maintained that they should be entirely dependent on him; whereas, the nuns asserted that

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they should be subject to the Superior General of the Congregation of the Mariana Fathers, who shares a common Founder with the nuns. The Holy Congregation, seeking a middle ground, resolved the doubtful matter in this way: "Provided that, in all respects, the canonical regulations remain in force, and the authority and jurisdiction of the Ordinaries over each house of the Daughters of Wisdom are preserved, and provided that the power of the Superior General is maintained, nothing shall be changed regarding the authority granted to the Superior General of the Society of Mary to preside over the General Chapter of these Sisters, to oversee and promote the observance of the Constitutions in each house, and to place those acts under the due dependence of the Ordinaries; which acts can contribute to the good and growth of the Congregation." The Bishop of Luçon, considering himself harmed in his rights by this decree, requested a new hearing, or a restoration to his former position, and the Most Holy Congregation, by decree of November 25, 1893, granted the request for a re-examination of the case, so that, if necessary, a restoration to the former state may be made.

A Synopsis of the Arguments:

FOR THE BISHOP. The Bishop of Luçon, in his printed statement, elaborates more fully on the concerns he had already expressed in the initial presentation of the case, and his entire argument is aimed at refuting the arguments of the opposing side. After stating that no derogation from the common law should be made except for a grave reason, he proceeds to attack the first argument of the Sisters, namely that the Superior General of the Society of Mariana was appointed by the Founder himself to the Sisters of Wisdom, an assertion which the Bishop rejects as unfounded, condemned by the written rule, and by history itself. It is unfounded because the words of the rule, namely that "the Superior General can do nothing without the counsel of the Spiritual Father," indicate that the Blessed Founder intended that the Superior General should act under...

[*Latin ed. p. 377*]

LUÇON. 377 Concerning the dependence on a Spiritual Director or Confessor. This [matter] is condemned by itself, because it prescribes that: "Nuns should obey the Bishop and the Superior appointed by him for the direction of the Community." It is condemned, moreover, by history, because the Society of Missionaries, later the Marian Society, did not exist at the time of the death of the Blessed Founder. Furthermore, the assertion that the Bishop is to be held in no esteem is contradicted by the peaceful possession of two centuries, with the approval of the Holy See and the Bishops of La Rochelle. Regarding the first point, the Bishop refers to the opinion of the Reverend Consultor, as discussed in the preceding discussion of this case. Regarding the second point, he refutes the assertions of the Nuns, especially concerning the Bishops of

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La Rochelle, Champflour and Crussol d'Uzés. The former, indeed, in the year 1715, approved the rules of the Nuns, but those which had been abandoned by the Blessed Founder, in which the authority of the Bishop is expressly recognized. However, concerning the appointment of the priest, M. Mulot, in the year 1720, as Superior General of the Daughters of Wisdom, he responds that at that time the Marian Society did not exist, and therefore he was acting as a delegate of the Ordinary. Furthermore, concerning Bishop Crussol d'Uzés, he states that, indeed, in the year 1773, the Constitutions were approved by him, but he adds that this was done with an express reservation of the rights of the Ordinary, as can be seen in the relevant passage. Moreover, he continues, precisely in defense of these rights against the pretensions of the Superior General of the Marian Congregation, the Bishops of La Rochelle and then of Luçon continuously protested. But on this argument, as with another that the Bishop refutes, concerning the alleged inconveniences arising from the suppression of the Superior General of the Marian Society, and the benefits arising from its preservation and from the unity of government, more has already been explained in the aforementioned opinion of the Consultor, or briefly summarized here. Nor, he says, are the adhesions of 35 Bishops, which the Nuns adduce in support of the preservation of the Superior General, to be considered. For first, among these, the adhesions of the Bishop of Rennes are not included.

[*Latin ed. p. 378*]

378 LUCION. The Bishops of Poitiers, La Rochelle, and Luçon, who would have had the greatest weight in the matter, since the Venerable Founder was born and died within their dioceses, began their deliberations and maintained the principal house of the Institute. Several Bishops of the western region, where the religious order of the Sisters of Wisdom is more numerous, are opposed to it. Then, among the Bishops who expressed their support, some did so because they believed that the petition was proceeding with the consent of the Ordinary and the protecting Cardinal; hence, after a more thorough understanding of the matter, 13 of them retracted their previous statements in writing to the Nuns. Subsequently, the Bishop presented 30 letters from Cardinals, Archbishops, and Bishops of France, unanimously requesting that the Sisters of Wisdom not be exempted from the legitimate authority of their Ordinaries, as this would set a bad example for other similar institutions and would be detrimental to ecclesiastical discipline. Finally, the examining Bishop concluded by stating that, although the decision of the Holy Congregation appears to clearly safeguard the jurisdiction of the Ordinaries, in reality, this is not the case, either because of the interpretation made by the two opposing institutions, or because of the existence of a General Superior, to whom the power is also granted to preside over the general chapter

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of the aforementioned Sisters, thereby infringing upon the jurisdiction of the Ordinary of Luçon, within whose diocese the principal house is located. This power, granted to the aforementioned General Superior by the decree of the Congregation, is, according to the Bishop, a contradiction in law and in fact. It is contrary to law, because the Constitutions clearly grant such power not to the General Superior, but to the Ordinary of the Mother House; it is contrary to fact, because this power has always been recognized in the aforementioned Ordinary, even by the General Superiors of the Congregation of the Mariana Islands, who, if they have exercised it, have done so as delegates of the aforementioned Ordinary. Based on the foregoing, the Bishop insisted on the full application of the law of common jurisdiction. DEFENSE OF THE NUNS. On the other hand, the Sisters, daughters of Wisdom, having stated that the decision of the Holy Congregation confirmed the established order of things...

[*Latin ed. p. 379*]

LUÇON. 379. At this point, having already reached its bicentennial and existing with the approval of the Holy See and of Bishops, they observe that the Bishop, in his allegation, has introduced nothing new, but has merely attempted to refute their arguments. Therefore, in this new allegation, the nuns are compelled to present their arguments with even greater clarity. And first, they maintain that, with the consent of Bishop Champflour, the Founder established that the Superior of the Missionaries should also be the Superior of the Sisters, as is clearly evident from the original rule approved by the same Bishop, in which the Founder established a Spiritual Father, who should simultaneously be a delegate of the Ordinary. Furthermore, the nuns readily demonstrate from the will of the first Superior herself that, according to the Founder, this Spiritual Father, the delegate of the Bishop, should be the Superior of the Missionaries, in which the first Superior commended obedience to the General Superior of the Missionaries, designated by St. Francis de Sales, for the governance and maintenance of the entire Congregation, in accordance with the rule. This is also confirmed by the original Constitutions, approved by the first two General Chapters. Finally, they confirm this by the very fact of the election of Father Malot as the General Superior of the Congregation of the Daughters of Wisdom, for at that time he also held the office of Superior of the Congregation of the Missionaries of St. Francis de Sales. The nuns, as being far from the truth, reject the assertion of the Bishop of Luçon, namely that the Marian Society did not exist at that time. For this society existed from the time of the Founder's death and consisted of the Founder, two priests, four laymen, and three postulants; which the nuns state they can prove, not only from the will of the Founder, but also from the historical account of Clorivière, even in the aforementioned allegation. Secondly, the nuns maintain that, whatever may be asserted to the contrary, this form of governance has con-

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sistently been approved by the Bishops, first of La Rochelle (-Saintes) and then of Luçon, as long as the Congregation of the Daughters of Wisdom remained a diocesan congregation; and they state that this is clearly evident from several documents cited in the allegation. But, they ask, was this same form of governance approved?

[*Latin ed. p. 380*]

380. In LUCIONENSI, etiam anno 1853, a Sacra Congregatione et deinde in praxi, recognitum est, sive ab Apostolico Sedes, sive ab Episcopis. Sane, primo, Institutum Filiarum Sapientiae et deinde Institutum Missionariorum Societatis Marianae instanterunt pro approbatione. Res remissa fuit Consultori, qui in suo voto, in sententia stetit, quod, facta reservatione debita iurium Ordinarii, iuxta legem Tridentinam, electio Superioris Generalis, quoad eius confirmationem, sicut eius dimissio et depositio a Supremo Pontifice dependeret, et non ab Episcopo Lucionensi, in cuius dioecesi domus primaria extabat, sicuti etiam nomine ipsius Pontificis, Superior deberet praesidere Capitulis, et partem habere in regimine filiarum Sapientiae, earumque domos invisere. Re proposita in Conventu generali, Sacra Congregatio respondit: "Utramque institutum esse approbandum, tamquam votorum simplicium, et nihil obstare quominus interim observentur Constitutiones reforynatae, iuxta votum Consultoris et ad mentem." Hinc Moniales concludunt quod utramque institutum fuit approbatum et quidem cum Superiore generali communi. Deinde haec ratio regiminis etiam in praxi recognita fuit, tum a Sacra Sede, tum ab Episcopis. A Sacra Sede, quia anno 1856, Vicarius Generalis Lucionensis, ex delegatione ipsius, praefuit electioni, post secutam dimissionem P. Dolin: idem praestitit anno 1860, Visitator Apostolicus in electione Superiorissae generalis: et anno 1873, declaravit quod novem ex decem partibus votorum etiam sufficient pro tertia electione Superiorissae generalis iam in officio. Ab Episcopis, quia Episcopi Lucionenses unanimiter hunc rerum statum ratum habuerunt, uno excepto actuali Episcopo, uti suis actibus fidem faciunt Episcopi Baille, De la Marre, Colet et Lecoq. Tandem Moniales contendunt Superiorem Societatis Marianae in iure et in facto praefuisse electionibus et Capitulis filiarum Sapientiae. In iure, quia haec facultas est concessa ab omnibus Constitutionibus Instituti, et adducunt analogas particulas illarum annorum 1773, 1845, 1853, quae ultimae correctae fuerunt a Rmo Consultore Sacrae Congregationis, et in quibus...

[*Latin ed. p. 381*]

LUÇON. 381: It is read: The right to convene a Chapter, whether ordinary or extraordinary, belongs to the Superior General, except in the case where two-thirds of the Chapter request the convocation. In fact, since the Congregation has always been diocesan, the Superior has convened all the Chapters, and of the 23 held, he himself presided over 22. After the

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approval of both institutes by the Holy See, 11 Chapters were held up to the year 1893, of which the Superior of the Missionaries always held the presidency. With these reasons elucidated, the nuns again bring to light the advantages and benefits that result from the uniqueness of the Superior General of both institutes, and they declare that the inconveniences raised by the Bishop are entirely unfounded and imaginary. Regarding what the opposing side argues concerning the letters of recommendation from the Bishops, they first respond that it was never their intention to provoke the manifestation of the Bishops: for the approval of the institute, according to the prescriptions of the Sacred Congregation, the recommendations of the Bishops, in whose dioceses the houses of the institute were located, were presented; but since they are now accused of deceiving the Bishops, they were obliged to repeat those same recommendations. Rather, the nuns state, the Bishop of Luçon should be considered to have attempted to incite a plebiscite among the Bishops, not only throughout almost all of France, but also in Mauritania; concerning which attestations, the nuns observe that the Bishops who gave them were either insufficiently informed about the institute, which they did not have in their diocese, or, if they did have it, they were misled; furthermore, if they object to the dependence of the Institute on the jurisdiction of the Ordinaries, this cannot be said contrary to the decision of the Sacred Congregation of June 2, 1893, which intends to preserve the jurisdiction of the Ordinaries in all respects. Having set forth both sides as briefly as possible, the intention was to elucidate 1.

[*Latin ed. p. 382*]

382 LUÇON. A question is raised concerning whether and how a decision made on June 2, 1893, in a certain case, should be confirmed or revoked. RESOLUTION. The Sacred Congregation of Bishops and Regular Canons, having again considered the question, on August 24, 1894, decided to respond as follows to the proposed question: Affirmative to the first part, negative to the second. FROM THIS, THE FOLLOWING ARE DEDUCED: I. The privilege, for which the possession has lasted for more than a hundred years, must be entirely maintained; indeed, for more than 200 years, the Congregation of the Daughters of Wisdom has had a common Superior with the Fathers of the Society of the Mariana Islands, namely, until the death of the Blessed Founder. II. Privileges are to be most carefully maintained when, in practice, they produce salutary effects and are successively strengthened by apostolic approval, as is the case in the present instance: for the Holy Congregation, in approving the Constitutions of the Nuns, also recognized the privilege of the common Superior. III. Therefore, the Bishop of Luçon rightly claimed the full application of common law: for, on the one hand, it is most fitting that institutions which have a common Founder should also have a common Superior; on the other hand, experience has shown that the original form of governance has always, or almost

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always, produced the best results. Elsewhere, the jurisdiction of the Ordinaries was safely established by a decree of the Holy Congregation, and only with regard to the presidency of the General Chapter of the Sisters was there a departure from common law; in all other matters, they must always proceed for the good of the Congregation, under the authority of the Ordinaries.

[*Latin ed. p. 383*]

383 FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, concerning the impediment of mixed religion, and concerning the rite by which the son of Catholic parents, but belonging to different rites, ought to be baptized. Dated April 11, 1894. Most Illustrious and Reverend Lord. In your letters to this Sacred Congregation, you have proposed certain doubts, the solution of which you request, namely: I. Whether marriages between Catholics and schismatics, which can easily occur in these regions, are to be considered, with regard to canonical conditions, equivalent to marriages between Catholics and heretics (baptized), contracted in defiance? II. In which rite ought the sons and daughters of parents who are Catholics, but belong to different rites, such as the Roman, Ruthenian, Armenian, etc., to be baptized and educated? After mature consideration of all matters, I believe that the following answers should be given to the proposed doubts: To I. Affirmative. To II. Generally speaking, the children of a family ought to be baptized and educated in the rite of the father. After these things, I pray to God O.M. that He may preserve you for a long time. With the utmost deference, Your most devoted servant, M. Cardinal LEDOCHOWSKI, Aloysius R.P., D. los, Redemaeher, Bishop, Prefect. VECCIA, Secretary. From Wayne-Castrum. FROM THE SACRED CONGREGATION FOR RITES, Granada, concerning the habit of the master of ceremonies and the morning readings. The present Reverend Archdeacon of the Metropolitan Church of Granada, by mandate of his Most Reverend Archbishop, has humbly submitted the following doubts to the Sacred Congregation for Rites for a suitable solution, namely: Doubt I. In the Metropolitan Church of Granada, one of the benefices of the same church serves as the master of ceremonies.

[*Latin ed. p. 384*]

384 From the Sacred Congregation of Rites: Concerning the ecclesiastical habit worn by those who use the choral habit, both in the choir and at the altar, when the Most Holy Sacrament is exposed. During the winter, this habit consists of a black cape with a black lining, properly fitted at the neck. From the Feast of the Ascension of the Lord until the Feast of All Saints, a mozzetta, humeral veil, and amice of the same color are worn, without a hood.

Question: Is it permissible for the Master of Ceremonies, considering a

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custom, not ancient, to perform his office wearing the choral habit, especially at the altar?

Doubt II. In the same church, the Readings are recited or chanted at Matins in the following order: The First and Second Readings of the first nocturn are recited by two acolytes from the choir, whether they are ordained or not. The Third Reading is recited by one cleric. The First Reading of the second nocturn is recited by another cleric. The Second Reading is recited by a younger canon, but the Third Reading is recited by the highest dignity after the Dean. Finally, in the third nocturn, the First Reading is recited by a cleric who is to chant the Gospel at the Conventual Mass. The Second Reading is recited by the weekly canon. The Third Reading is recited by the Dean. However, on days when the pluvial vestments are worn at Matins, the Octave Reading is recited by the Dean, and the Ninth Reading by the hebdomadarius.

Question: Can the aforementioned custom be lawfully observed? And, to the extent that it is not, what order and which dignity of persons should be observed in the recitation of the Readings?

And the Sacred Congregation, in response to the report of the undersigned Secretary, and to the earnest request of another of the Masters of Ceremonies of the Apostolic Chamber, having considered the aforementioned doubts, decided to respond as follows:

To I: The Ceremonial of Bishops should be observed, and a decree should be issued in Capua on April 10, 1876.

To II: Negatively, to the first part; to the second: On solemn days, the provisions of the Ceremonial of Bishops (Book II, chapter V, number 4, and chapter VI, number 15) should be observed; on days that are not solemn, the order of dignity should be observed, so that the Readings of the First Nocturn are recited by acolytes; the Readings of the Second Nocturn are recited by clerics; and finally, the Readings of the Third Nocturn are recited by canons. And thus it was written and declared on December 14, 1894.

C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation.

L. * S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation.

[*Latin ed. p. 385*]

385. ENCYCLICAL LETTER from Our Most Holy Father Leo XIII, by which the Institute "for the Propagation of the Faith" is fostered and commended. To spread the name and kingdom of Christ more widely among the nations, and to invite those who have strayed and those who are at discord to the bosom of the Church, and to restore them, this, as We feel in Our heart, is the primary duty of the supreme office which We hold; and for a long time, with urgent apostolic charity, it has been the aim of Our cares and studies. For these sacred reasons, We have never ceased to defend and promote expeditions, especially those through which the light

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of Christian wisdom is spread to the erring, and to provide assistance to support them in Catholic populations. We have done this, in particular, in the third year of Our pontificate, through encyclical letters entitled *Secta Dei Civitas*, with the intention of encouraging the illustrious Institute "for the Propagation of the Faith" to gather greater piety and generosity from Catholics. We wished to encourage the pursuit of that very work, which, having begun with modest origins, had grown to such an extent in a short time; which Our illustrious predecessors, Pius VII, Leo XII, Pius VIII, Gregory XVI, Pius IX, had adorned with testimonies of praise and with the gifts of Indulgences; and through which so much help had already been brought to the sacred missions throughout the world, and even greater assistance was to be expected in the future. And, thanks be to God, the response to this encouragement has not been insignificant; for, with the zeal of bishops and the generosity of the faithful, We see that this most meritorious work has been expanded even in recent years.

However, a new and more pressing need now exists, which desires more abundant spirit and hand from the Catholic "charity," and which sharpens, Venerable Brothers, your prudence. For, as you well know, through the apostolic letter *Praeclara*, published last June, We have seen fit to serve the providence of God, by calling and encouraging all nations to the unity of the Christian faith; and We consider this to be the highest aspiration, that in due time, through Us, the divinely promised time may come to pass, in which there will be one flock and one Shepherd.

In the meantime, however, We are particularly concerned about the East and its Churches, which bear many names and are venerable, as you have recently learned from Our apostolic letters which We have written concerning the preservation and protection of the Oriental rites. *Acta, Vol. XXVII, p. 309.*

[*Latin ed. p. 386*]

386 Encyclical Letter: The reasons which have been brought to your attention, after careful deliberation with the Patriarchs of those nations, have been explored to determine their usefulness and suitability for achieving the desired outcome. Nevertheless, we do not deny that these matters are fraught with great difficulties. To overcome these, although our own strength is limited, we nevertheless place our entire trust and constancy in God, in which, above all, we must find our strength. For He who has given us the idea and the beginnings of this undertaking will certainly provide the necessary strength and assistance to complete it; and this is what we strive to implore through fervent prayers, and what we earnestly urge all the faithful to implore. Since divine assistance, which we confidently seek, must be joined with human effort, it is therefore necessary that we seek out and provide all that may seem conducive to the goal we have in view, and it is fitting that we expend certain

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resources for this purpose. For, as you know, Venerable Brothers, in order to ensure the return of those who have strayed to the one Church, it is first necessary to provide from among them a suitable supply of sacred ministers, who are rich in doctrine and piety, and who may encourage others to embrace the desired unity; moreover, the Catholic wisdom and way of life, which must be widely disseminated, must be imparted in such a way as to be more readily adapted to the customs of each nation. Therefore, it is necessary to ensure that suitable and well-equipped institutions are established, wherever it is expedient, for the religious education of youth; that there are more gymnasia available, or others, depending on the needs of the place; that the practice of piety is provided for with dignity in each locality; and that the best writings may be made available to all, so that knowledge of the true religion may spread. You easily understand, Venerable Brothers, how great the expense will be to achieve these things; you also understand that the Eastern Churches, by themselves, cannot entirely cope with so many and such great matters, nor can we, in these difficult circumstances, provide as much assistance as we would like. Therefore, it remains necessary to seek suitable and timely support, especially from that Institute which we have just praised, whose purpose is closely aligned with the goal we now have in mind. But at the same time, it is very important to ensure that the apostolic missions, which are partly supported by resources diverted to other uses, do not suffer any detriment; therefore, it is greatly to be desired that the generosity of Catholics be extended to this Institute. A similar caution should be exercised with regard to the affiliated and useful Institute that has been established by the Schools of the East.

[*Latin ed. p. 387*]

ENCYCLICAL LETTER 387, addressed to Our Brothers; especially since, with those who govern it having openly promised, it is likewise prepared to receive a contribution from them, We, as far as it is possible for Us, will contribute to the same. Therefore, Venerable Brothers, in this matter We have set forth Our wishes in particular: and We do not doubt that you, who with Us constantly strive to support and promote the cause of religion and the Church in every way, will render Us excellent service. Strive diligently, so that the Association for the Propagation of the Faith, entrusted to your care among the faithful, may increase as much as possible. For We are certain that many will gladly give it their names and contribute generously according to their ability, if they clearly see through you what its excellence is, and how rich it is in spiritual benefits, and how great are the advantages for the Christian cause that can be legitimately hoped for in the present. This certainly ought to move Catholics deeply, when they know that they can do nothing that is so pleasing to Us, nor so salutary for themselves and the Church, as to comply with Our wishes, so that they may diligently

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strive to contribute in such a way that We may, in fact, suitably and happily fulfill what We have established for the good of the Eastern Churches. But may God, for whose glory alone everything is done in the spread of the Christian name and in the holy union of the same faith and government, look favorably upon Our desires, and may He favor your endeavors: and may the auspicious benefits of His most excellent gifts be bestowed upon you all, Venerable Brothers, and upon your clergy and people. Given in Rome, at St. Peter's, on the 24th of December, in the seventeenth year of Our Pontificate. LEO XIII, POPE.

LETTER FROM HIS HOLINESS, POPE LEO XIII, TO THE ARCHBISHOPS AND BISHOPS OF THE FEDERATED STATES OF NORTH AMERICA.

We traverse vast distances of the ocean in spirit and thought: and although We have addressed you in writing on other occasions, especially when We have sent common letters to the bishops of the Catholic world for authoritative purposes, We have now decided to address you separately, for this reason, that, if it please God, We may be able to benefit the Catholic name among you. And We approach this matter with the utmost care and diligence: because We do much and we love greatly.

[*Latin ed. p. 388*]

388 LETTER to the Americans, a vigorous people in their youth: in whom we clearly perceive hidden growth, not only in civil matters, but also in the Christian spirit. Since your entire people, with due honor and significance, celebrated the fourth centenary of the discovery of America, a memorable event not long past, We also recall with you this auspicious occasion through communion of joy and similarity of purpose. At that time, We did not consider it sufficient to have offered prayers for your safety and prosperity; We desired, in some way, to be present with you in your celebrations; for this reason, We gladly sent one who would represent Our person. And what We accomplished in your celebration was not done without reason: for the American people, scarcely brought into the light and still wandering in swaddling clothes, were received into the bosom and embrace of the Church, the loving mother. For as Columbus sought, through his voyages and labors, the fruit of which was the opening up of new lands and new seas to the Christian name, so that the Gospel might be proclaimed, adhering constantly to this purpose, he had nothing older than to plant the sacred image of the Cross on the shore. Therefore, just as the Ark of Noah, having passed beyond the surging waves, carried the seed of the Israelites along with the remnants of the human race, so too the ships of Columbus, entrusted to the ocean, brought to the shores beyond the seas the beginnings of great nations and the first fruits of the Catholic name. What followed afterward is not the subject of this discourse. Certainly, among the peoples discovered by the Ligurian, even

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then rustic, the Gospel shone forth most quickly. It is well known that many, from the Franciscan, Dominican, and Jesuit orders, for centuries have been accustomed to navigate to these lands for this very purpose, to cultivate the colonies brought from Europe, but above all, to bring the indigenous people from superstition to the Christian faith, through labors consecrated not once, but repeatedly, with the blood of martyrs. The very names given to your many new towns, rivers, mountains, and lakes clearly demonstrate and testify that your origins are deeply imprinted with the traces of the Catholic Church. — And perhaps it was not without some divine providence that We recall here: that the American colonies, with the help of Catholic people, achieved freedom and established a republic founded on law, at that very time.

[*Latin ed. p. 389*]

LETTER 389: Among you, there exists a properly constituted ecclesiastical hierarchy. And just as, at the very time that great Washington ascended to the leadership of the republic, the first Bishop of the American Church was appointed by apostolic authority. Furthermore, the friendship and familial custom that exists between you seems to demonstrate that these united states ought to be joined together in concord and friendship with the Catholic Church. And this is not without reason. For a republic cannot stand except upon good morals; and this was keenly perceived and declared by that eminent citizen of yours, whom we just mentioned, in whom there was such power of intellect, prudence, and civic virtue. But religion best and most completely contains good citizens, since it, by its very nature, safeguards and defends all those principles from which duties are derived, and it directs action in the most important moments, commanding us to live virtuously and forbidding us to sin. But what is the Church, if not a legitimate society, founded by the will and command of Jesus Christ, for the preservation of moral sanctity and the practice of religion? For this reason, as we have often endeavored to demonstrate from this exalted position of the papacy, the Church, although by its very nature and essence it concerns itself with the salvation of souls and the attainment of happiness in heaven, nevertheless, even within the realm of mortal affairs, it produces so many and such great benefits that none could be greater, if not first and foremost, for the preservation of the prosperity of this life that is lived on earth. No one can deny that your republic is progressing and is advancing with rapid strides towards a better state; and this is evident even in matters that concern religion. For just as the states have grown in the immense power and advantages resulting from the conversion of a single soul, so we see the Church, from its very small and humble beginnings, rapidly growing and flourishing wonderfully. Indeed, if, on the one hand, the increased wealth and resources of the states are rightly attributed to the ingenuity and industrious diligence of

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the American people, on the other hand, the flourishing condition of the Catholic Church is due first to the virtue, intelligence, and prudence of the Bishops and clergy; and then, to the faith and generosity of the Catholics. Thus, with each order contributing according to its ability, you have been able to establish countless pious and useful institutions: sacred buildings, literary games for children, homes for the elderly, shelters for the poor, hospitals, and monasteries. And with regard to those things that are more closely related to the cultivation of souls, which is contained in the practice of Christian virtues, there are many...

[*Latin ed. p. 390*]

390 A letter has reached us, which fills us with hope and joy: namely, the gradual increase in the number of clerics of both orders; the flourishing of pious associations, the vigor of the Catholic parochial schools, the schools for the instruction of Christian doctrine, the schools for estimation; associations for providing mutual assistance, for alleviating poverty, for promoting temperance in food; and to these, many other examples of popular piety are added. It is undoubtedly the decrees and ordinances of your Synods that have contributed greatly to this prosperity, especially those which the Apostolic See has subsequently called for and approved. But furthermore, it must be admitted that a great deal of credit is due to the laws of America, and to the well-constituted morals of this republic. For it has been granted to the Church among you, without violating the proper limits of civil authority, to enjoy the freedom of living and acting without offense, protected by the laws, and by the force of common justice and of judicial judgments. But although these things are true, it must be corrected, lest anyone should infer from this that the example of the best state of the Church should be sought from America; or that it is universally permissible, or even advisable, to separate and dissociate civil and religious affairs, as is done in the American manner. For the fact that the Catholic cause is flourishing among you, and is growing even more prosperous, is entirely due to the fecundity with which the Church is endowed by divine grace, which, if left unhindered and unimpeded, spontaneously offers itself and expands; but it would bear even more abundant fruit if, in addition to freedom, it enjoyed the benefits of the laws and the protection of public authority. We, for as long as it has been permissible, have never neglected to preserve and strengthen the Catholic cause among you. To this end, we have undertaken two things above all others, as you well know: one, to promote the study of doctrines; the other, to ensure a more complete administration of the Catholic cause. Indeed, although there were many institutions of higher learning, and those of lesser importance, we deemed it necessary to establish, with the authority of the Apostolic See, one institution, which We would also promote with all legitimate rights: in which Catholic teachers would instruct students in knowledge, first in philosoph-

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ical and theological matters, and then, as circumstances and times permit, in other disciplines as well, especially those which our age has produced or perfected. For all learning is incomplete if it does not include knowledge of the more recent disciplines. Indeed, in this rapidly changing age of intellects...

[*Latin ed. p. 391*]

LETTER 391. In this fervent pursuit of knowledge, so widely disseminated, and which is in itself praiseworthy and honorable, it is fitting that Catholics should lead, not follow. Therefore, they ought to instruct themselves in all the elegance of doctrine, and diligently exercise their minds in the exploration of truth, and, as far as possible, in the investigation of nature. This is what the Church has always desired in every age, and for this reason she has always been accustomed to contribute to the advancement of the sciences as much as she could, through her works and efforts. Therefore, through letters dated March 7th, 1889, addressed to you, Venerable Brothers, we established a large gymnasium for the youth eager to learn the higher disciplines in Washington, in the capital city; and you yourselves have indicated, by a large number, that this location is most suitable for the best studies. Regarding this matter, when we spoke to our Venerable Brothers, the Cardinals, in the Consistory (1), we declared that in this gymnasium, as a matter of law, instruction and doctrine should be joined with the safety of the faith, and that young people should be educated not less in religion than in the best arts. Therefore, we have ordered the Bishops of the United States, with the Archbishop of Baltimorensi having the authority and function, as it were, of a Chancellor, to oversee the proper conduct of studies and the discipline of the students. And indeed, by the grace of God, the beginnings have been quite joyful. Without any delay, as you held secular ceremonies in memory of the ecclesiastical hierarchy, the sacred disciplines were begun with auspicious omens, in the presence of Our Legate. From that time, we have learned of men of great talent and learning who are dedicated to teaching theology, whose praise for their intelligence and doctrine is joined with a steadfast adherence to the Apostolic See. And it is not long since we received news of buildings erected by the generosity of a pious priest, begun from the very beginning, for the purpose of teaching sciences and literature, for the benefit of both clergy and lay young people. From the example of these men, we are easily confident that the citizens will follow suit; for we are not unaware of the character of the Americans; and nothing that is placed in this matter of generosity can escape them, when it is compensated with the greatest common benefits. No one is unaware of how much has flowed into all of Europe, and into the abundance of doctrine and the power of humanity, from such lyceums, which the Roman Church, at various times, has either established herself, or approved by laws and encouraged. Today, it is enough to remember the

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Lovaniense, to remain silent about the others (1).

(1) December 30th, 1889.

[*Latin ed. p. 392*]

392 LETTER: The Belgian nation seeks increase in prosperity and glory almost daily. Indeed, a small but similar number of benefits can easily be conferred upon the great Lyceum of Washington, if the professors and students, which we do not doubt, will obey our precepts, and if, having abandoned petty studies and contentions, they will commend to the people, to the clergy, and to our charity, the benefits of this place. To you, Venerable Brothers, we wish to commend this institution, an urban college for young men from North America, founded by our predecessor, Pius IX, and which we ourselves, through letters dated October 25th of the year 1884, have endeavored to establish by legitimate means: and this, indeed, has not entirely disappointed our expectations. You yourselves are witnesses that, in a short period of time, many good priests have come from it, among whom are those who have attained the highest degrees of the sacred dignity through virtue and doctrine. Therefore, we believe that you will certainly find it worthwhile to send selected young men here, in order to establish institutions for the benefit of the Church: for having developed their talents and virtues in the city of Rome, they will, at some time, display them at home, and will bring a common benefit. In a similar manner, moved by charity from the very beginning of our pontificate, and concerned for Catholics from your nation, we began to consider the Third Council of Baltimore. And when the Archbishops, invited by us to Rome for this purpose, arrived, we diligently inquired of them what they considered to be of common concern: finally, after summoning all of Baltimore, and after mature deliberation, it was decided, and we ordered that it be ratified by apostolic authority. However, the fruits of this labor have quickly become apparent. Since the deliberations of Baltimore have proven salutary and very appropriate for the times, the very fact proves it. It is already evident that its purpose is to establish discipline, to stimulate the diligence and vigilance of the clergy, to protect and promote the Catholic education of the young. — Although we recognize your industry in these matters, Venerable Brothers, and we praise your constancy combined with prudence, we attribute the merit to you: for we clearly understand that such an abundance of good things would not have so quickly and expeditiously reached maturity, if you yourselves, having wisely determined what was to be done in Baltimore, had not...

[*Latin ed. p. 393*]

You have diligently and faithfully striven to carry out, to the extent of your power, what was commanded. But now that the Baltimorensi council has concluded, the next step was to add a fitting and appropriate element to

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this work: and we have seen that this could scarcely be accomplished better than by the Holy See establishing a legation in America; and therefore, as you know, we have duly established it. And having done this, as we have explained before, it seemed fitting first to testify that, in our judgment and benevolence, America is, just like the others, in the same place and under the same law, especially the great and powerful nations. Then, we also considered that the bonds of office and relationship, which you, who represent so many thousands of Catholics with the Holy See, should have, should be strengthened. Indeed, the multitude of Catholics understood that what we have accomplished is beneficial to them, and furthermore, they have recognized that it is in accordance with the custom and the institution of the Holy See. For, it is well known that the Roman Pontiffs, because they hold the divine authority to govern the affairs of Christianity, have from ancient times been accustomed to send their legates to nations and Christian peoples. And this is not done arbitrarily, but by their own inherent right, because "the Roman Pontiff, to whom Christ has given ordinary and immediate power, over all and each Church, over all and each pastor and faithful," (1) since he cannot personally visit each region, nor exercise pastoral care over the flock entrusted to him, he must sometimes, by reason of the service imposed upon him, designate legates to various parts of the world, as needs arise, who, by fulfilling his role, will correct errors, turn difficulties into opportunities, and minister to the growth of salvation for the people entrusted to them. (2) Moreover, how unjust and false would be the suspicion, if any such suspicion existed, that the legation would diminish the power of the bishops. Holy to us, as to no one else, are the rights of those whom the Holy Spirit has appointed to govern the Church of God, and we want and must ensure that these rights remain intact in every nation and in every region of the world: especially because the dignity of each bishop is so closely connected to the dignity of the Roman Pontiff.

(1) Council of Trent, Session IV, Chapter 3.

(2) Chapter 1, Extravagant, Concerning Customs, Book 1, Title 1.

[*Latin ed. p. 394*]

394 LETTER. It is written that one must necessarily counsel the other, so that one may protect the other. My honor is the honor of the universal Church. My honor is the solid strength of my brothers. I am truly honored when no honor due to each individual is denied (1). Therefore, Apostolic Legates, whatever power they may possess, since they are sent by the Pope to carry out mandates and interpret his will, are in no way detrimental to the ordinary authority of the bishops, but rather are a source of strength and support. Indeed, their authority will have considerable weight in maintaining obedience among the faithful; in ensuring proper discipline among the clergy; and in fostering mutual charity and close communion among the bishops. This very salutary and desirable union, when it exists, and

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when all strive to think and act in harmony, will certainly ensure that each of you diligently continues in the administration of your diocese: that no one hinders another; that no one inquires into the counsel or actions of another; and that all, setting aside dissensions and maintaining mutual respect, strive with the utmost effort to promote the honor and the common good of the American Church. It is scarcely necessary to point out how much the concord of the bishops benefits not only ourselves, but also others, through the power of example: for those who easily perceive that the order of Catholic bishops has truly inherited a divine apostolic heritage. Furthermore, there is another matter that must be carefully considered. Prudent men agree, as We have indicated above, and not unwillingly, that America is destined for greater things. However, We desire that the Catholic Church participate in and assist in this greatness. Indeed, We believe and hold it necessary that it strive for the betterment of things together with the republic, taking advantage of the opportunities that the times offer; and at the same time, that it contribute as much as possible to the growth of the states through its virtues and institutions. But both of these things will be much easier to achieve and accumulate, the better the future is established. Indeed, what does the legation, of which We are speaking, intend, or what does it aim for, if not to make the Church's constitution firmer and its discipline stronger?

(1) St. Gregory, Letter to Eulogius of Alexandria, Book VIII, Epistle 50.

[*Latin ed. p. 395*]

LETTER 395. Since this is the case, we greatly desire that this may penetrate ever deeper into the hearts of Catholics daily, so that they may not believe they can better serve themselves privately, nor merit greater spiritual benefit, than if they have wholeheartedly submitted to and obeyed the Church. Although these people scarcely need exhortation on this matter, for they are wont spontaneously and with commendable constancy to adhere to Catholic institutions. It is fitting to recall here one thing of the greatest importance and benefit to all, which is faithfully maintained among you, as it ought to be: the Christian doctrine concerning the unity and perpetuity of marriage, in which not only the domestic bond, but also the civil union of citizens, receives the greatest security. Many of your citizens, even those who disagree with us on other matters, admire and approve of this Catholic doctrine and practice concerning marriage, namely, because they are terrified by the license of divorce. And when they judge thus, they are led not less by patriotic charity than by the wisdom of prudent counsel. For it is scarcely conceivable that there could be a more grievous plague for a state than the desire to dissolve the bond, established by divine law, which is perpetual and essential to individuals. Divorces "make" marital agreements mutable: mutual affection is weakened: "pernicious incentives for infidelity are provided": the protection and "education of children are

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harmed: an opportunity is given to discourage domestic societies: "seeds of discord are scattered among families: the dignity of women is diminished and depressed, who "are in danger of being treated as abandoned, if they have served the lusts of men." And since nothing is more effective in corrupting morals and destroying families and the wealth of kingdoms than the corruption of morals, it is easily seen that divorce is most harmful to the prosperity of families and the state (1). Concerning civil matters, it has been demonstrated and proven that, especially in a popular republic, such as yours, it is of great importance that the citizens be virtuous and of good morals. In a free state, unless justice is generally cultivated, unless the laws are frequently and diligently brought back to the evangelical precepts, freedom itself can be harmful. Therefore, those of the clergy who labor in instructing the people should treat this topic concerning the duties of citizens in detail, so that all may deeply understand and hold it in their minds, that faith must be rendered in all aspects of civil life.

(1) *Enc. Arcanum*.

[*Latin ed. p. 396*]

396 LETTER: Abstinence and integrity are necessary: for what is not permitted to private individuals, it is not permitted in public matters either. On this subject, there are many things, as you know, in the encyclical letters which We have written during Our pontificate, to which Catholics must adhere and to which they must conform. We have treated of human liberty, the principal duties of Christians, the civil authority, and the Christian constitution of states, drawing from both the evangelical doctrine and the principles of reason. Therefore, those who wish to be good citizens and to conduct themselves with fidelity in their offices, can easily find the model of honesty in Our letters. – In a similar manner, the priests of the Council of Baltimore are urged to remind the people: especially those matters concerning the virtue of temperance, the Catholic institution for young people, the frequent use of the sacraments, and obedience to just laws and institutions of the republic. Furthermore, great care must be taken when entering into societies, lest anyone be deceived by error. And We especially mean this concerning craftsmen: for it is certainly permissible for them to join a society for the sake of obtaining advantages, with the consent of the Church, and without violating the nature of things; but it is of the utmost importance with whom they associate, lest, when they require assistance in matters of greater importance, they be drawn into the ruin of far greater goods. The greatest safeguard against this danger is that they themselves should establish, and never abandon, that they will never, at any time or in any matter, abandon justice. Therefore, if any society is governed by people who are not steadfast in righteousness, who are not friends of religion, and who are subject to their influence, it can greatly harm both publicly and privately, and it cannot benefit. Therefore, it must be the case that not only

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should associations openly condemned by the judgment of the Church be avoided, but also those which, in the opinion of prudent men and especially of Bishops, are considered suspect and dangerous. Indeed, for the safety of the faith, Catholics ought to associate with Catholics, unless necessity compels them to do otherwise. Furthermore, priests or laymen of good character and of grave authority should preside over these societies, and, with their guidance, they should strive to accomplish peacefully what seems expedient to them, in accordance with the precepts which We have set forth in Our encyclical letters on *Rerum Novarum*. Moreover, they must never allow themselves to be swayed, to defend, or to secure the rights of the multitude—

[*Latin ed. p. 397*]

LETTER 397. It is fitting and desirable, but without neglecting duties. Indeed, those duties are very great: to refrain from interfering with others; to allow each person to be free in their own affairs; to prevent no one from applying their efforts where and when they please. What you saw last year in the homeland, through violence and disturbances, sufficiently warns Americans that even in their land, the audacity and perfidy of the wicked threaten. Therefore, the times demand that Catholics strive for the tranquility of public affairs, and therefore, observe the *leges*, abhor violence, and seek no more than justice and equity allow. Those who have devoted themselves to writing can greatly contribute to these matters, especially those who labor diligently in daily publications. It is not hidden from us that many are already well-trained in this arena, and their efforts deserve more praise than encouragement. However, given the eagerness to read and learn that exists among you, and given that good and evil can be the greatest influence, every effort must be made to increase the number of those who perform the task of writing with knowledge and the best intentions, guided by religion and accompanied by integrity. And this is all the more necessary in America, given the customs and practices of Catholics with those of other faiths: for this is certainly a cause for which our people must be steadfast and unwavering in their resolve. They must be instructed, admonished, strengthened in spirit, and encouraged to pursue studies of virtue and to fulfill their duties towards the Church, especially in times of such offenses and betrayals. This care and effort is the proper and very great task of the clergy; but nevertheless, the writers of periodicals and the *industria* at Monteu da Po are also needed, and they too must strive, for the same cause, and contribute as much as they can. However, they must seriously consider that the effort of writing, if lacking in sincerity, will certainly not be beneficial to religion, especially if the hearts of those who seek the same things are not in harmony. Those who seek to serve the Church and to defend the Catholic name with sincerity must strive together with the utmost agreement, and almost as if by contract, so that

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they may not appear to be repelling, but rather advancing, the cause, even if some seem to dissipate their strength through discord. — In a similar way, writers can turn their efforts from fruitful and beneficial endeavors to those that are harmful and calamitous, whenever they dare to criticize or condemn the decisions or actions of bishops, abandoning due modesty.

[*Latin ed. p. 398*]

398 LETTER: How much disturbance to order, how many evils are generated! Therefore, let them remember their duty, and let them not exceed the just limits of modesty. Those who are placed in the highest degree of authority must be obeyed by the Bishops, and due honor must be given, suitable to the magnitude and sanctity of the office. This reverence, "which no one may neglect," is clearly evident, especially in the increasing number of Catholic periodicals, and it must be presented as an example, without fail. For periodicals are "born to travel far and wide, and they come daily into the hands of everyone, and they can greatly influence the opinions and morals of the multitude" (1). In many places, We have ourselves taught about the duty of a good writer: and also, the Third Council of Baltimore, and the Archbishops who met in Chicago in the year 1859, have renewed this teaching with common agreement. Therefore, let these documents, both Ours and yours, be impressed upon the minds of Catholics, and let them decide that the entire method of writing must be directed in this way, if they truly wish to fulfill their duty, as they ought to. Now, our thoughts turn to those who disagree with us in the Christian faith: of whom, does anyone deny that many disagree more by inheritance than by will? In order that we may be concerned for their salvation, and that we may desire with all our heart that they may one day be restored to the fold of the Church, our most excellent Apostolic Letter recently declared this. And indeed, we are not without all hope: for He is present who sees all things, and who laid down His life that He might gather together into one all His children who were scattered (2). Certainly, we must not abandon them, nor leave them in the mind, but rather, with gentleness and the greatest charity, we must draw them to ourselves, persuading them in every way, so that they may be led to examine all parts of Catholic doctrine, and to cast off preconceived opinions. In this matter, the first part belongs to the Bishops and Clergy; the second part belongs to the laity: for it is in their power to support the apostolic effort of the clergy with the integrity of their morals and the soundness of their lives. The power of example is great, especially among those who sincerely seek the truth, and who pursue honesty, which is a certain quality of virtue, and among our citizens there are many of this kind. If the spectacle of Christian virtues is presented to those who are hardened in ingrained ethnic superstitions (t),

(1) Ep. Cognita Nobis ad Archiepp. et Epp. Provinciarum Taurinen. Mediolanen. Vercellen, xxv Ian. an. MDLCCCXXXII.

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(2) John 11:52.

[*Latin ed. p. 399*]

LETTER 399: We can only say, as far as the testimonies of writings attest, that we will not consider anything to be capable of eradicating error among those who have been initiated into the sacred mysteries of Christianity? Furthermore, we cannot remain silent concerning those whose prolonged misfortunes implore and demand help from apostolic men: we mean the Indians and the Blacks, included within the American territories, who have not yet, for the most part, dispelled the darkness of superstition. What a field for cultivation! What a multitude of people to whom the benefits of Jesus Christ must be imparted! Meanwhile, as a pledge of heavenly favors and a witness of Our benevolence, We impart to you, Venerable Brothers, and to your clergy and people, Our Apostolic blessing in the Lord. Given in Rome, at St. Peter's, on the sixth day of January; the Feast of the Epiphany of the Lord, in the year 1837, in the seventeenth year of Our Pontificate. LEO XIII.

LETTER: A brief letter from His Holiness Pope Leo XIII to the Archbishops and Bishops of Piedmont, after the Eucharistic Congress. Venerable Brothers, greetings and the Apostolic blessing. While the pursuits of many men, neglecting eternal things, solely pursue the advantages of the present time, it is a cause for joy that Catholic men, assembled in solemn gatherings, strive to illuminate minds and to turn hearts to eternity, with faith as their teacher and helper, and with sacred disciplines. Among these gatherings, we undoubtedly consider those, by reason of the nobility of their purpose and the hope of greater benefit, who, borrowing the name of the Eucharist, dedicate themselves to honoring and amplifying the memory of Our Savior Jesus Christ, who is with us in the Sacrament of the Eucharist until the consummation of the age. For nothing can more effectively foster the charity of Christ Himself in the hearts of men, and unite minds in that mutual peace and benevolence, which Christian society and civil society most need. Therefore, We were very pleased to hear of the happy outcome of the Eucharistic Congress held in Augsburg, in Piedmont.

[*Latin ed. p. 400*]

400 LETTER, under the auspices of both Archbishops of the Piedmont region, and with the favor of other sacred prelates. We have indeed felt this joy increase, because in that very city, a society has been established, named after the Eucharistic Feasts, and which aims, through writing and action, and above all through the promotion of the cult of the Eucharist, to draw men towards better things. We commend this society, which has already earned merit through its endeavors, and we hope that excellent results will arise from it. These endeavors, indeed, are established by the diligence of the Bishops, and although they ought to be fostered by the

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care of the laity, they must especially be established and promoted by the work of the clergy. It is their duty to cherish the beauty of the House of God, and to perform the most sacred ceremonies with due reverence, and then to lead the people by word and example, so that they may be more and more aroused to venerate the Eucharist. From this new flourishing of the priesthood, the best things are foretold for Christian peoples, so that the life of Christ may be manifested in all things; for it pertains to the institution of the Eucharist, according to the very words of Christ, that the faithful may live for Him. Aware of these benefits, Venerable Brothers, and witnesses to our benevolence, may the Apostolic blessing be imparted to you individually, and to the clergy and people to whose care it has been entrusted, that it may endure in the Lord. Given in Rome, at St. Peter's, on the twenty-sixth of January, 1889, in the seventeenth year of Our Pontificate. LEO XIII, POPE.

[*Latin ed. p. 401*]

401 FROM THE HOLY CONGREGATION OF THE COUNCIL OF VARSAW, DISPENSATION OF MARRIAGE, September 1, 1889, Session 21, Chapter 1, Concerning Reforms of Marriage. SUMMARY OF THE CASE. On the twentieth of August, 1889, Constantia Pietro, a young woman of 24 years, having observed the Tridentine form, entered into the conjugal bond with Ludovic Lubienski, also 24 years of age, in the parish church of Saint Alexander, in the city of Warsaw. These marriages, which seemed to be inaugurated with a happy omen, were not followed by a peaceful cohabitation. For, as the woman asserts, Ludovic, since he was impotent for the duties of marriage, made six or seven fruitless attempts at consummation, hence arose quarrels and contentions. This discordance of spirits seems to have been given an opportunity by the husband's prodigality, who, being burdened with debts, demanded a large sum of money from his wife, even employing a strategy to extort it from her. Therefore, four months after the marriage, Constantia, distressed by her condition, left the conjugal home and returned to her parents' house. But the husband, after the woman's departure, publicly struck Constantia's mother with a stick; afterwards, he committed a theft; and then, in order to avoid judgment and punishment, he fled, and it is not presently known where he resides. Then Constantia presented a petition to the archiepiscopal court of Warsaw, so that the sacramental marriage might be declared null, on account of the husband's impotence. The archiepiscopal court, having received the petition, took care to summon Ludovic, whose whereabouts were always unknown, by means of a citation, published three times in three newspapers. Acts, Volume XXVII,

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page 199, paragraph 26.

[*Latin ed. p. 402*]

402 WARSAW. After an unfortunately prolonged period, the Warsaw Tribunal initiated legal proceedings in January of the year 1892. The woman and seven witnesses were questioned, and all testified to the woman's piety, virtue, and good reputation. Furthermore, an examination of the woman's body, conducted after bathing, in the presence of a virtuous matron, was carried out by three midwives appointed by the tribunal, under the guidance of two physicians, the reports of whom will become evident from the following. During the judicial inquiry, which was conducted as far as Malix, when Ludovicus unexpectedly appeared and obtained a copy of the proceedings, the judge ordered him to be formally examined, but in the meantime, he again made his whereabouts unknown; therefore, the judge again attempted to summon Ludovicus for examination through the newspapers, but, as in the first instance, without success; and therefore, he declared him contumacious. However, since, due to the man's contumacy, there was no legal proof of his impotence, and therefore the nullity of the marriage could not be declared, Constantia appealed to the Archbishop of Warsaw, requesting that the proceedings be transmitted to Rome, along with a new petition, so that the Supreme Pontiff might grant a dispensation regarding the marriage. The Archbishop approved the petition and humbly requested that His Holiness, with the support of his apostolic authority, might deign to grant a dispensation regarding the marriage, which was both valid and not consummated, in response to the most humble petition of the woman.

SYNOPTIC ACCOUNT: DEFENSE OF THE WOMAN. The woman's advocate primarily sought to demonstrate the lack of consummation of the marriage, based on her own testimony: "The day after the wedding," the woman stated, "my husband approached me to consummate the marriage, but he was unable to do so, although I was willing to be with him. I perceived that my husband lacked all firmness... Therefore, I reiterate, and with all certainty, that the marriage was not consummated. Throughout our time together, my husband attempted to be with me."

[*Latin ed. p. 403*]

WARSAW. She states that she has been married forty-three times, and that she has always earnestly beseeched her husband, yet the marriage has never been consummated, and for the same reason always, namely, that the husband is incapable of the act of carnal copulation. As for the husband, it seems to me, as I have said, that he is impotent, and for this reason, a few days after the marriage, he suffered a certain irritation and pain in the head, which is called neuralgia. On several occasions, he has told me that a doctor had prescribed that he drink as much wine and beer as possible. On several

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occasions, the husband has complained to me that he could not fulfill his conjugal duty, and once, during a moment of exacerbation, he said that perhaps it would be necessary for us to be immersed in water. The woman, according to the defense, maintained a profound silence, and, due to her ignorance of marital matters, only after separation from her husband did she learn that he was held back by impotence, and for this reason alone, and not because of the continuous vexations inflicted upon her by him, she requested the dissolution of her marriage. For she confesses: "At the beginning, I declared that the marriage had not been consummated by me. Although my relationship with my husband has been distressing, and although he has borrowed money, I do not, therefore, request the dissolution of the marriage; but because this marriage has not yet been consummated due to the husband's impotence." Furthermore, the defense argues that the testimony of Constantia should be given great weight, considering her exceptional probity and piety, as witnesses, the majority of whom are over seventy years of age, unanimously attest; indeed, some even mention the husband's impotence. The mother of the woman states: "My daughter is devout, virtuous, and honest, and she has committed no lie, much less perjury, in any matter, not even in this present case." The father testifies: "I attest that my daughter, Constantia, is a religious woman, and that she has committed no lie, much less perjury, in any matter. I add that she separated from her husband because he treated his wife insolently and was impotent to perform his conjugal duty. I am fully persuaded that..."

[*Latin ed. p. 404*]

404. VARSAVIA. It is said that I declared in the examination, and affirmed under oath, the genuine truth; whereas, indeed, even before the commencement of the legal proceedings, I had informed her that her husband was impotent. Helena Karska, the woman's aunt, states: "Constantia Lubienska is a very religious, virtuous, and honest woman. I am fully convinced that the confession of Constantia Lubienska contains the genuine and sincere truth; for, from familiar conversations with her aunt, I learned that the actress was still a virgin. Maria Karska, another of Constantia's aunts, testifies that she is a religious, honest, and virtuous woman, and incapable of lying, let alone committing perjury. She adds that she has heard that the actress's husband is incapable of fulfilling his marital duties, and that, according to a medical opinion, the actress is a virgin. I assert with certainty that Constantia has never lied; therefore, the statements made by her in the protocol and affirmed under oath are the genuine truth. Finally, to express it in a single sentence, three other witnesses unanimously extol the woman's honesty and piety with the highest praise. Furthermore, the advocate continues, it is not necessary to unduly emphasize the moral argument concerning the lack of consummation, since the physical evidence from the examination clearly demonstrates the existence of the actress's

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virginity. It is observed that the examination was conducted so carefully and according to the rules, that none of the prescriptions mandated by the sacred canons were omitted. The midwife, Leocadia Szyskowska, in a report written immediately after the examination, describes the parts clearly and enumerates several signs of virginity; then, under oath before the Judge, she testifies: "All the signs of virginity were found in Constantia Lubienska; and these signs are certain and not subject to any doubt, for I observed them directly and by fact. After enumerating the signs, which indicate that a woman has lost her virginity, she continues: "Furthermore, all of these are absent in Constantia Lubienska; on the contrary, as I have already said, those that demonstrate her virginity are present. The hymen is completely intact, sufficiently thick, its shape is rounded, its color is pale: the opening is very narrow,..."

[*Latin ed. p. 405*]

WARSAW. 408, so that I could barely insert the tip of my little finger. This is confirmed by Iosepha Dombrowicz. The sworn depositions of the midwife and the absolute judgment regarding the existing virginity, have been confirmed by two most expert men, chosen by office, the advocate noted, one of whom testified before the judge, the other in writing. Furthermore, the advocate adds, since such a question depends on a fact known to experts in the art, it is most prudent that the Sacred Congregation prescribe an oath and other precautions; but that, if these have been scrupulously observed, it necessarily follows that the experts in the art can be safely believed, and that they should rather be called upon by the judge by office to judge than to testify, as taught by Cardinal De Luca, *De iudiciis*, discourse 33, paragraph 20; and by the Abbot in chapter *Proposuisti* 4 on Proofs, paragraph 3. The advocate proceeds to the causes for a dispensation from marriage, arguing that the case advances to the point of considering such dispensations. And he recalls that the first and most important reason to be considered is the probable impotence of the man, of which he mentioned the signs above; and that when "this is added as a motive and cause for a gracious dispensation, it does not require conclusive proof, but it is sufficient that the impotence be so probable that the Supreme Pontiff can consider it true, and that he may be moved to grant the dispensation for this very reason, because in these terms, the dispensation is properly and strictly not such, but rather a prudential administration of justice, which befits the Supreme Prince, by declaring the intrinsic nullity of the marriage under a more honorable and expedient title of dispensation." Ursaya, volume 3, part 2, discourse 21, number 104. The second cause for a dispensation consists in the greatest aversion of the parties, and in no hope of reconciling peace and restoring conjugal intercourse, he recalls. On this cause, Cardinal De Luca speaks at length, *De Matrimonio*, discourse 9, paragraph 8; Sánchez, *De Matrimonio*, book 12, discourse 10, paragraph

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3; and Lancellotti, in Ursaya, volume 3, part 2, discourse 21, note 62; and others.

[*Latin ed. p. 406*]

406. VARSAVIEN. Omitting countless others, Cardinal Cosci, *De Separatione Matrimonii*, Book 1, Chapter 10, paragraph 252. In the present case concerning the alienation of affections, it is not to be doubted, since all the injuries and insults which the woman has suffered from her husband still remain in her mind, and he has proceeded to the point of striking her mother with a stick after the separation; furthermore, he fled to FÃ¼rth to avoid punishment, and it is not known where he now resides. Therefore, the petitioner, requesting a dispensation, adds, in addition to other reasons, "that I cannot continue to live with a husband who, having violated the duties of piety towards my mother, and having committed various dishonorable acts, has extinguished every bond by which I was ever bound to him." Furthermore, a very serious argument for granting the dispensation arises from the danger of incontinence and the fear of fornication. Fagnanus, in Chapter "Verum," paragraph 11, on the Conversion of Conjuges; Ursaya, Volume 3, Part 2, paragraph 92; and, as he leaves thousands of other examples unmentioned, the aforementioned Cardinal Cosci, *De Separatione Matrimonii*, Book 1, Chapter 10, paragraph 210. Moreover, the unblemished probity and piety of the woman are celebrated by all the witnesses with the highest praise. Indeed, since this concerns a woman who has been endowed with good health and is in the prime of her life, if the requested dispensation were denied, her virtue would be exposed to a very severe trial; and this is to be feared above all, because, afflicted by celibacy and seduced by perverse suggestions, she would be most wretchedly plunged into fornication.

OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND. On the other hand, the defender of the sacred bond observed that Constantia had refused Lewis, the husband, a promissory note. Indeed, Helena Karska stated: "The spouses separated definitively, arguing, because the husband (Lewis) had demanded that she sign a promissory note for the sum of 4,000 rubles after he had gone to a tavern." Another relative of Constantia, Maria Karska, testified: "I know... "

[*Latin ed. p. 407*]

WARSAW. It is stated that (Ludovic) has definitively separated from his wife and taken up residence in a boarding house, because he was unable to obtain money from her, nor could he secure a promissory note. Nor is this different with Charles Podozascki, a relative of Constance. He says: "The relationship between the spouses of Lubienski was unfortunate; the principal cause of discord was the debt, by which Lubienski was burdened, and which the actress wished to eliminate from the family estate. Therefore,

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it is clear," says the advocate, "that Ludovic was experiencing great difficulties in his domestic affairs; however, this does not necessarily mean that Constance had a just cause to abandon her husband. Above all, it is far from certain that all the blame for these financial matters rests with Ludovic. For Ludovic is absent from the proceedings; no witness from his side has been examined, nor has anyone been dismissed from their office. But even if we were to concede that all the blame lies with Ludovic, if Ludovic not only squandered his own property, but also endangered the wife's assets, Constance should not have fled, but should have forbidden him, with the help of the authorities, to manage the domestic affairs." Furthermore, according to the advocate, the friends of Constance, Felicia Pietrowska and Maria Czarnecka, are not to be believed, as they attempt to attribute the dissolution of the marital relationship to Ludovic's difficult nature. For they claim to know nothing of their own knowledge, but only what they have heard from the actress and her parents, without mentioning the circumstances of the time, and are therefore, to say the least, suspect. Furthermore, they contend that Ludovic's alleged impotence only came to light at a suspicious time. For of all the witnesses presented by Constance, not one has heard anything of the kind, either before the marriage or before the separation. Indeed, Constance herself admits that, during their cohabitation, she did not notice that her husband was incapable of consummating the marriage. Moreover, she swears: "During our cohabitation, I never inquired about his inability to consummate the marriage, because at that time I did not understand what was a legitimate reason."

[*Latin ed. p. 408*]

408. VARSAVIEN. The marriage was, in truth, invalid. Finally, after abandoning her husband, she recounted to her mother how her husband had behaved towards her, and she learned that their union had not been consummated. Therefore, at the beginning of this process, she declared with certainty that the marriage had not been consummated by her. The advocate does not deny the intelligence of Constantia, but he cannot accept that, once Constantia herself admits that she discovered, in the conjugal bed, certain things that only a woman, accustomed to a man, could recognize. Indeed, she says: I discovered that her husband lacked all firmness, and that nothing was introduced into my female body, except for a certain fluid that did not penetrate within my body. Furthermore, she says that Constantia is contradicting herself most clearly when she attempts to assert Lewis's impotence. Indeed, in her response to the tenth question, she swears that during their cohabitation, she had not revealed to anyone Lewis's impotence, because she only learned, after abandoning her husband (as she says), that their union had not been normal. Indeed, she had previously sworn in her response to the ninth question: Several times (during our cohabitation), my husband complained to me that he could not fulfill the

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marital duty, and once, in a moment of distress, he said that perhaps it would be necessary for us to be immersed in the waves. Therefore, she concludes, if Constantia's testimony is to be believed, she both perceived Lewis's alleged impotence and, at the same time, was completely ignorant of it. The only certain thing is that none of the witnesses heard anything about Lewis's, as yet unmentioned, impotence at the time. In reality, Constantia confesses: During our cohabitation, I did not complain to anyone about the impotence that prevented the consummation of the marriage... after abandoning her husband, she recounted to her mother how her husband had behaved towards her. Indeed, the two witnesses who speak of the aforementioned impotence offer nothing that they have not received from Constantia and her mother. Expressly, Maria Karska says: I heard from Constantia Lubienska and her mother that the actor was her husband.

[*Latin ed. p. 409*]

WARSAW. 409, a matter both grievous and contrary to the duty of a husband. Nor could this have been unknown to Constantia's father, who says: "The husband treated his wife insolently and was impotent in fulfilling his conjugal duty." Furthermore, the tutor of the sacrament urges that the famous impotence of Lewis was not something intrinsically hidden, as sometimes happens, but manifested by external signs: namely, Constantia says, the semen lacked all vigor and produced no seed, except for a certain fluid. Therefore, it is not easily understood how it could have been that this manifest defect escaped the notice of all of Lewis's parents, relatives, and neighbors. For if it had been known, they would have been called to testify, and Constantia would have had more certain grounds for her complaint. However, not one of Lewis's relatives or acquaintances, either by Constantia or by the judge in his official capacity, was brought to an examination. Indeed, the very impotence of Lewis was concealed: for if he knew himself to be a barren and useless man, he would certainly not have taken a wife. From these things, the advocate concludes that one of two things must necessarily follow: either Lewis's impotence is a fabrication to be dismissed, or there is no reasonable basis for the requested dispensation, and the decree must be added with the clause: "The man is forbidden to enter into other marriages." Therefore, Lewis must be warned. No one is to be condemned without due process. But he has not yet been judged, because, unconcerned about the sanctity of the sacrament, he believed the matter to be concluded with a dispensation of marriage, which he himself does not readily accept. Therefore, Lewis must be notified, as is due, of the most serious matter that threatens him, namely, the prohibition of other marriages. The advocate urges this especially because he suspects Lewis's stubbornness and believes that Constantia places the greatest trust in that stubbornness. For, he says, if Constantia were to inform the judge that Lewis is to be held in capital custody, or in the inquisition prison of

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Warsaw, it has been determined by the judge's investigation that he is not held in prison. Furthermore, Lewis is taken to an unknown dwelling, and the judge repeatedly strives to bring him to an examination through notices. Nevertheless, Lewis, in a judicial manner,

[*Latin ed. p. 410*]

410 VARSAVIEN. After an investigation conducted in Malix, the court rendered its judgment and the records of the proceedings were delivered to it. However, this does not prevent Ludovic from approaching the examination, even if the judge has ordered otherwise. Finally, it is noted that, if Constantia is to be believed, and she swears: that her husband lacked all virility and was not introduced into her womanly body, and that he did not shed any seed, except for a certain discharge that did not penetrate within her body, nor did she, nor her parents, at that moment, doubt whether she remained a virgin. But the contrary occurred. For Maria Karska, Constantia's aunt, testified: "I heard from Constantia Lubienska and her mother, that according to medical opinion, the actress was a virgin." Indeed, Constantia stated to the judge, as per the Instruction of the Sacred Congregation of Councils, August 22, 1840, §: "If a complaint is made, did the experts whom she consulted not declare that?" Considering, on the contrary, Constantia's concern to bring the matter of the husband's beatings and condemnation to prison before the judge and the Most Holy Prince, the advocate fears that collusion may be hidden between the spouses, since, according to what is known, an unrequested excuse is a manifest accusation. Nor does the testimony regarding the examination of the woman's body move the one asserting the sacrament; for he says that this argument is not infallible, nor is it sufficient by itself to establish the nullity of the marriage. It is enough to recall the practice of the Sacred Congregation of Councils, which, besides the testimony of the midwife and physicians, has always considered other necessary proofs, especially the examination by seven witnesses from each side. Sánchez, in *De Matrim.*, book 7, disputation 108, number 8, states: "However, the doctors, whom I mentioned previously, expressly hold the contrary, asserting that this oath (of seven witnesses from each side) is always required, when impotence is not evident, which is the case here. For often the eyes and hands of the midwife are deceived, even to the greatest extent, because women use many deceptions with which they appear to be virgins." And on this matter, the advocate also refers to the words of Zacchias, in *Quaestiones Medicae, Legales*, book 3, title 2, question 7, number 1.

[*Latin ed. p. 411*]

WARSAW. 411 He states that midwives or doctors can be deceived, not only because of the danger of the aforementioned frauds, but also for entirely natural reasons; for a virgin, with her hymen remaining intact, can

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not only avoid consummating marriage, but can also conceive a child; and how this can happen is mentioned by Zacchia, book 4, title 2, question 1, paragraphs 28 and following, who is cited in the notes. This is corroborated by modern experts in the art of Hygieia, among whom is Doctor Mahon, who quotes the words of Pineau. Medicine, law, and police medicine, volume 1, page 102. Furthermore, the defender continues, even a brief examination of a woman's body by midwives, carried out according to legal procedures, is sufficient to establish the certainty of the lack of consummation; the examination performed on the body of Constantia by the midwives, and the judgment subsequently rendered by experts, do not at all provide this certainty. First of all, he says, it is not sufficiently established that the bath in which Constantia was immersed met the conditions prescribed by law for detecting frauds, which are used to examine women. Indeed, the Instruction of the Sacred Congregation of 22 August 1840 mandates that at least two doctors should examine whether the water of the bath meets these conditions. In the aforementioned case, however, only one doctor examined the water. Furthermore, the aforementioned Instruction stipulates that midwives should conduct the examination separately, that is to say, that each midwife should enter the room in which the woman being examined is staying after another midwife has left; in this way, each midwife should write and submit a written account of the completed examination to the judge before knowing the judgment of the other midwives. But in our case, the midwives remained in the same room during the examination. Emilia Sztolcmanowa, who performed the duties of an honest matron, reports: while one midwife was performing her duties, the others stood nearby, at some distance. Finally, the aforementioned Instruction clearly distinguishes the role of midwives from that of doctors in such matters. Specifically, the midwife examines the body of the woman being examined...

[*Latin ed. p. 412*]

412. It is necessary to recognize, and to record in writing, the signs of virginity or corruption that have been discovered, so that the inviolability or corruption of the cloister of virginity may be clearly indicated. It pertains to the physicians to diligently examine the signs of virginity or corruption, reported first by the midwives, and then in a judicial examination, and, according to what nature dictates in their judgments, to declare the woman examined to be either chaste or corrupted. But, on the contrary, the physicians, Felix Wojcihiewicz and Edward Przewoski, seem to be swayed not by the signs reported by the midwives, but by the opinion of the midwives, when they declare Constance to be a virgin. And truly, when the advocate asks: "Considering the opinion of the midwives, what do you decide concerning the virginity of Constance Lubienska? Do you have any doubt about your judgment, and by what scientific reasoning do you support

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it?" Felix Wojcihiewicz replies: "Considering the opinion of the midwives, which they formed based on the examination, specifically, the finding of an intact and unbroken hymen in the vulva, I cannot conclude otherwise than that Constance Lubienska has been a virgin until now, and has not yet consummated marriage." With almost the same words, the physician Przewoski replies: "Having considered the opinion of the midwives, I am convinced that Constance Lubienska is a virgin in respect to sexual matters, and in this matter, I have not the slightest doubt about the judgment that I pronounce, based on the reasons specified above." Furthermore, the advocate notes that those who are concerned about the virginity of Constance speak in such a way that they seem to deny that she has ever been with child. In truth, Felix Wojcihiewicz says: "There is present in the vulva an intact and unbroken hymen, which proves that the woman has been a virgin until now, and has never been pregnant, nor has she been a mother." All the midwives unanimously declare that the woman is a virgin, and therefore has not been pregnant, nor has she been a mother. Nor does Edward Przewoski differ. For he says: "All the midwives, with unanimous agreement, have declared that Constance Lubienska is a virgin, and therefore has never been in labor." Since this is the case, it seemed superfluous to speak further about the reasons for granting a dispensation.

[*Latin ed. p. 413*]

WARSAW. 4th of [Month not specified]. Having rapidly considered both matters, the objective was to resolve the question of whether it is necessary to consult with the Most Reverend [Bishop] regarding a dispensation concerning a marriage that is valid but not consummated, in a particular case. RESOLUTION. After deliberation by the Sacred Council on September 1st, 1894, it was decided to respond: Affirmative. DERTHUSIEN. SERVICES OF THE CHOIR. On September 1st, 1894, Session 24, Chapter 12, Concerning Reforms. The cathedral chapter of the Diocese of Derthusien, in its statutes enacted in the year 1852, desired, with due deference, to equalize with the other canons the dignities, which previously were not part of the chapter, just as in all of Hispania, granting them the same rights and obligations. Consequently, the dignities and the remaining members of the chapter were subject to the obligation of celebrating conventual Masses, fulfilling the weekly schedule of the choir, and serving at the altar. However, despite the explicit will of the statutes, it appears that such articles were never put into effect; for the dignities, up to the present time, have remained exempt from these obligations. But, the canons, wishing to enforce the execution of the statutes on December 6th, 1892, in the chapter meeting, instructed the dignities to conform to the statutes by celebrating conventual Masses and performing the weekly schedule. But the dignities, accustomed to established practices, opposed any innovation. SUMMARY OF THE MATTER. The dignities maintain this position. They claim to be bound by the

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preservation of the rights of their positions, which... DEFENSE OF THE DIGNITIES.

[*Latin ed. p. 414*]

414. It is shameful to burden successors with debts incurred through unjust means. The question of whether capitulars could alter the rights of dignities through a simple capitular convocation, focusing rather on past actions, has been raised for nearly forty years. Since the time that capitular statutes have been in force, these articles have never been enforced, whatever the reason may be. Therefore, just as before the statutes, the dignities have enjoyed immunity from contentious burdens. Nevertheless, the most pious prelates and the most religious capitulars, even to this day, have never insisted on the enforcement of these articles, nor have they ever disturbed the dignities from their peaceful possession of their liberties. From these established facts, the dignities ascend to the principles of law, and thus establish a certain and well-defined custom. Indeed, when accepted customs do not violate natural or divine law, nor do they undermine the fabric of ecclesiastical discipline, they of their own nature, after a certain time, constitute customary law. In this case, not only can customary law not be opposed by natural or divine law, but neither can it be opposed by ecclesiastical law, because the custom of these dignities had already been peacefully observed everywhere in Hispania when the capitular statutes were promulgated. Therefore, the capitular chapter must bear the blame if it has not been sufficiently diligent and watchful in enforcing the observance of the statutes. Regarding the observance of the statutes, it is customary to issue an oath when receiving the benefits of a dignity; however, this oath is not sufficient to interrupt the custom, because the oath is presumed to have force only with regard to articles that are in common use. Furthermore, it cannot be maintained that the chapter could have ceded its rights for so long without impunity, as if out of benevolence towards the dignities, without incurring the effects of customary law. Finally, the dignities offer a certain Royal Decree of the year 1832, which suspends the capitular statutes in this case. DEFENSE OF THE CANONICALS. The patron of these.

[*Latin ed. p. 415*]

D'ERTHUSIËN, 415, observes that in the case of a dispute, whether it concerns custom or prescription, according to the opinion of Reiffenstuel, "this must be understood as follows: the norms which are prescribed by law for the introduction of a custom are those of true custom, or that which is contrary to or beyond the common law; but not that in which the prejudice of a third party is involved... for it is required, in order that this law, which has already been discussed, be prejudiced, that there be a true prescription, as is confessed." *Ius emi. univ. ad tit. de consuet. cap. IV, n. 145.* And a little later, "where it is a question of taking away a right from one and acquir-

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ing another, it is called prescription, not custom." *ibid. § 109.* The Most Illustrious Cardinal De Luca, as others might be omitted, agrees in *De iurisd. disc. 34, n. 28* and *96, n. 15 theat. ver. et tust*, adding, "In this case, the terms of prescription apply, not those of custom, not only where there is a dispute between private persons; but also where it concerns political bodies, such as Capitula, Colleges, Cities, and Religious orders with similar entities." And it is certainly not a question of words; for it is clear from the precepts of the sacred canons that it is much easier to find a custom than to acquire a right by prescription, "for custom is favorable, prescription is odious." Fagnanus, *comm. in Decr. ad cap. Venerabili 14 de censibus lib. III, tit. 30, n. 27.* The opinion of the Doctors, as expressed by Reiffenstuel, is shown to be consistent with reason. The foundation of custom is at least the presumed consent of the legislator; for otherwise, the law could not be overturned due to a lack of jurisdiction. On the other hand, prescription is entirely based on possession, or quasi-possession, held in a certain manner and for a certain time. The Doctors assign this difference between the two: "By prescription, a right is acquired for a private person, or even for a single College; by custom, not more for one than for another, nor for any private person, but solely for the Republic and the community, and that is a legal right or an unwritten law." Pirhing, *Iur. Eccl. met. nova lib. I, tit. IV* sect. I, § 5, n. 331. "Prescription gives a right to one, contrary to the law, or beyond the law, or even according to the law." *ibid. n. 2.*

[*Latin ed. p. 416*]

416. DERTHUSIEN. Having established these points, the Orator observes that, in this case, we are dealing with a matter of prescription. For it is certain that both the common law and the Capitular statutes, established in the year 1852, have conferred a true and legitimate right upon the Canons, in order to assist the Dignitaries in their canonical duties. However, the conventual Mass must be said daily: the choral service must be performed daily. Therefore, if the Dignitaries abandon these duties, the right of the Canons is certainly violated; for their burdens are undoubtedly increased, being distributed among a smaller number of Clerics. But, he continues, the Dignitaries will never be able to demonstrate that this pertains to a custom. And indeed, it is rightly doubted, in the first place, whether the immunity, which the Dignitaries of Derthus claim for themselves, can be legitimately acquired by prescription. For the opinion of the Doctors is that, contrary to ecclesiastical discipline, it is not possible to acquire something by prescription. There is no doubt about the authority of this opinion, as Fagnanus adds a calculation to it, in his commentary on the Decree "ad lib. IL tit. de praescr." c. Cum olim n. 24. It is well known how diligently the sacred canons have striven, so that the conventual Mass in Cathedral and Collegiate churches should be recited daily by all Clerics belonging to the Chapter, for the benefit of all those who have benefited

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the Church, without any immunity being invoked, and by turns. After the chapter "Cum Creatura de cel." in which this was commanded to all Chapters, Benedict XIV, on August 19, 1744, promulgated the celebrated constitution "Cum semper oblatas," by which he restrained certain corrupt customs that had crept in, and he established that the sacred conventual Mass should be offered by all "in their respective turns" who "hold in the same church either dignities, or canonries, or prebends, or choral benefices," indeed even by the archpriest, although the care of souls had been entrusted to him, and who therefore held another obligation to perform the sacred rite for his flock. Hence, it follows that all authors who write on this subject teach in agreement that no Cleric, who is co-opted into the Capitular order, whether he holds the title of Dignitary or merely serves as a prebendary, can abandon this duty.

[*Latin ed. p. 417*]

DERTHUSIËN. 417 *Monacellus Form. leg. praticum*, vol. 1, tit. 2, form. 4, § 10; *Ferraris Bibliot. canonica*, verb. *Hebdomada*, n. 20. The best reasoning is given by Pignatellius in *Consilia canonica*, vol. I, cons. 374: "Dignities which are part of the Chapter are subject to exactions and other burdens, just like canons: indeed, where there is profit, there ought to be a burden; and he who embraces gain ought to bear a burden." However, the Sacred Congregations have been so diligent that this norm, which even justice itself seems to demand, has remained hidden, so that neither have the Bishops been permitted to allow any of the Chapter members to be relieved of this burden, nor have the Congregations themselves granted such exceptions, except very rarely, by the authority of the Holy See. And indeed, in Albinganen, on April 27, 1844, a certain decree of a Bishop was declared invalid, which had stipulated that the Dignities should be excused from the office of celebrating the sacred conventual Mass, alternating with the Canons. In Fanen, on April 29, 1789, and in Faventina on the same day, the archpriest and archdeacon were assigned to the same celebration. In Tolentino, on May 26, 1714, in *lib. 64 Decr.*, and in Squillacen, on March 17, 1739, it was decreed that not even the Dean should be excused from this office. In Alexandrina, on July 7, 1770, the Prefect, to whom the care of souls in that church was entrusted, requested an exemption from the multiple obligations that burdened him, an immunity which the Dignities of the present-day Chapter of Derthusiën claim for themselves. The Sacred Congregation, after being petitioned, denied the request, although, perhaps, a certain reason of benevolence seemed to suggest that consideration should be given to the cleric so burdened with duties, which the Dignities of Derthusiën certainly do not have. The Council of Ariminen, on August 18, 1827, decreed. In Auximana, on December 16, 1820, the Sacred Congregation decided that each Chapter member should be so bound by the office of performing the conventual sacrifice that he cannot demand that

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an outside cleric perform it, even if such a custom has prevailed; indeed, neither can others from the Chapter substitute for him, as was the case in Capua on December 17, 1735, and April 28, 1736, nor can it be done by the claim of custom in Scepusien, on July 30, 1796, and May 6, 1797. Furthermore, there are six hundred other decisions that have restrained the negligence of certain clerics in performing this office; as the Sacred Congregation states in the *Acta*, vol. XXVII, page OOCXIX, 27.

[*Latin ed. p. 418*]

418 DERTHUSIEN. At the synod of Amalphitana on April 13, 1715, in book 65, decrees; at Iesi on September 9, 1843; at Namien on April 14, 1714, in book 64, decrees; at Brugnaten on May 28, 1796; at Ariminen on September 18, 1851. The Sacred Congregation of Bishops and Regular Canons, at Bovino on December 9, 1625, etc. Furthermore, the Advocate notes that, with regard to Spain, the discipline of all the churches there is wonderfully suited to it. The chapter of Derthusien, having inquired of all the cathedral chapters in Spain whether they were fulfilling the duty of celebrating conventual Mass in turn, learned that in all the cathedrals of Spain, either the office of chanting the sacred conventual Mass is entirely common to the Canons with dignity, or certain days are assigned to certain dignitaries, in which they are obliged to celebrate the conventual Mass; and that the Deacon, who in some churches did not fulfill this duty in turn with other Canons, must perform the conventual sacrifice on these designated days. If no Canon, the Advocate continues, can excuse himself from the canonical hours, it cannot be that anyone can excuse himself from the conventual Mass, which is the more important part of the divine office; "for more is taken away from the divine worship when the conventual Mass is not celebrated, than if the canonical hours were not celebrated, since the worship of the sacrifice is greater than that of the canonical hours." Ferraris, *Bibl. can.*, verb. *Canonicatus*, art. V, § 621. Furthermore, this is confirmed by the jurisprudence of the Holy See. Thus, in Tusculana, *Missa conv.*, April 21, 1707, and April 13, 1709, the Archpriest and Canons were compelled to celebrate the conventual Masses in turn, although certain statutes decreed that they should only be celebrated by the mansionaries, and this had long been the custom. In Squillacen, on March 11, 1713, in book 63, decrees, the petition of the Canons was rejected, who maintained that certain conventual Masses, which they were obliged to celebrate, should be celebrated by priests participating, citing the ancient discipline of their Church, which exceeded human memory; and finally, the Advocate urges these words of Benedict XIV in the Constitution *Cum semper oblatas*. "Some..."

[*Latin ed. p. 419*]

"They [the Dignities] have persuaded themselves that, even though a custom contrary to this has been in force for a long time in their

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own Church, they can be exempted from this burden [of celebrating conventual Masses]. But it has already been answered many times that no one is justified in relying on a custom, even if it is ancient, which is rather to be called an abuse and a corruption. Regarding the decree issued at the order of King Ferdinand of Hispaniae, he notes that it is possible to argue that the opinion of a lay prince on this matter should be disregarded, because it is clearly contrary to the sacred canons and the Constitution of Benedict XIV, since it does not grant him any power to hold public meetings, nor to interfere with the governance of Chapters or to prescribe rights to Canons, despite papal sanction. But the speaker argues against his opponents, saying that this decree did not intend to compel the Dignities to celebrate conventual Masses before a uniform discipline on this matter had been established in all the Churches of Hispaniae, which, however, fully prevails today. The speaker further points out that the objection raised by the Dignities lacks good faith, which is always and at every moment necessary in the case of prescription. For all those clerics who were subsequently ordered to hold offices in the Cathedral Chapter of Derthusien could not have been ignorant of the duties imposed on them by the statutes of their Church. Indeed, all these clerics, when accepting their benefices, swore to observe the statutes faithfully. But even if someone, imagining something completely absurd, were to suppose that all the Dignities of the Cathedral Church of Derthusien have always acted so imprudently that they were unaware of the obligations they had undertaken, and that they swore to observe a law of which they had no knowledge: this ignorance could not be the basis of good faith. For we are dealing with an error of law, which never excuses; but in prescription, it is clearly stated that 'ignorance of the law is not beneficial, but ignorance of the facts may be beneficial' (I. IV, ff. de iur. et fact. ignor.)."

[*Latin ed. p. 420*]

420. This error excludes good faith: "He who obtains something contrary to the law is not presumed to have acted in good faith," Reg. 82, title VI. This principle is also to be understood in relation to general laws, which are promulgated by the Pontiff or Prince and apply to the entire Church or commonwealth, and also to those persons to whom error cannot be attributed to fault—indeed, even—according to the better opinion—which the sacred canons have not corrected, as transmitted by the *romans* jurists; Engel, *Collectio Universalis Iuris*, p. II, book IV, title XIV, no. 2; Reiffenstuel, *Ius Ecclesiasticum Universale*, concerning the title on prescription, § III, no. 69, etc., concerning rural people and women, who have no, or very little, knowledge of the law. "In matters of profit, women who are ignorant of the law are not usually assisted," I. 11, code on ignorance of law and fact, I, 18. "Ignorance of the law does not benefit women in summary proceedings," L. 8, D. on ignorance of law and fact, XXII, 6. Nor is anyone

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harmed thereby: for the dispute is not about avoiding damage, but about obtaining a profit, which the legislator preferred to deny rather than allow some private individuals to suffer detriment through negligence. Just as prescription is established by human law, and can be limited by the same, Layman, *Theologia Moralis*, book II, chapter IV, question 5; much more so, therefore, can this ignorance of the law not be the foundation of legitimate prescription, when it is a matter of some rule of law, not only derived from sacred canons, but confirmed by particular statutes of the Church, which the clergy of that same Church cannot, without fault, ignore. Finally, the advocate cites these words of the most illustrious Ovarruvia, *Regulae Possessorum*, § 7, no. 7, p. II: "Ignorance of the law is then a sin and a fault, when someone is ignorant of those things which he is bound to know according to his particular status and office: for everyone is bound to know all those things which pertain to the office and status which he holds, or the action which he intends to undertake... it is a fault, and from it sin is proven, if someone is ignorant of those things which people of his condition and status commonly know, and which are perceived with ordinary diligence." The speaker anticipates the objection that those who acted in bad faith.

[*Latin ed. p. 421*]

DERTHUSIEN. 421. He argues that only the first predecessors, by anticipating a prescription that could not be excluded in bad faith, allowed the legitimate time to elapse. Barely forty years have passed since the statutes of Derthusien were approved by the Bishop and began to be observed, on October 1, 1852, to the day that the Chapters, neglecting their duties, were urged to fulfill their office, in 1893. If the time is considered during which the Dignities, which existed in 1852, participated in life; the period during which the usucapion of liberty continued, is certainly less than forty years, perhaps even thirty years shorter: and therefore, a complete prescription cannot be considered. Furthermore, he states that the Canons have often professed that they suffer greatly from the negligence of the Dignities. The Canons affirm this, although the Dignities vehemently deny it. With these premises, he says that the Dignities cannot, in any way, clear themselves of bad faith. Indeed, the only reason why the Dignities could have been permanently excused from the statutes, shortly after their foundation, is the Apostolic privilege granted to them and their successors. Therefore, either the successors believed that a privilege existed that did not actually exist; or they themselves supported it, while only considering their predecessors; and in this case, an error was made; but it is not entirely blameless. For everyone should diligently inquire whether there is a just cause, before abandoning an obligation which they have undertaken under oath. However, an error made at that time can only be the basis of good faith, according to the common opinion of the Doctors, when it is invincible, as they say; Reiffenstuel, *ius can. univ.*, ad tit. de praescr., §

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III, n. 78; Schmalzgrueber, *ius Eccl. univ.*, p. Iii, tit. XXVI, § 14, n. 66. Or, the successors may have believed that the patience of the Canons was sufficient without any privilege, so that they would obey the rights of the community. And this error, legally, cannot be beneficial. Adding to this, the patron, regarding another condition of prescription, namely time, it cannot be doubted that the Canons, who form one ecclesiastical body, enjoy the privileges of Churches, so that the ordinary prescription does not apply to them. However, it is the law that the rights of Churches are valid for forty years.

[*Latin ed. p. 422*]

422 DERTHUSIËN. Quod per cursum temporis per praescriptionem extingui potest; sed tempus immemorabile, vel titulus coloratus, requiritur, si ius canonicum usucapienti resistit. Reiffenstuel, *Ius can. univ.*, ad titulum de praescriptione; Layman, *Theol. mor.*, liber II, caput VI, dub. VIII, n. 23; Covarruvias, *Reg. poss.*, p. 2, § 10, n. 7; Peregrinus, *De iure fisci*, liber 6, caput VIII. Cum ergo manifestum sit ius canonicum Dignitatibus apertissime contrarium, et cum illa ratio agendi, quae hodie valuit, memoriam hominum certe non excedat, titulum adversarii ostendere debent. Sed causa optima sinit, pergit orator, ut etiam id fingatur, quod iuri non congruit. Esto quadragenariam praescriptionem absque titulo sufficiere: ne haec quidem Dignitatibus noceret. Non negat quadraginta annos ab hoc tempore effluxisse, ex quo statuta observari coeperant, cum in capitulari conventu diei 6 Decembris 1892 actum est de dignitatibus ad missarum conventualium celebrationem adiungendis. In primis, animadvertendum est, adversarii asseruisse, sed ullo modo non approbasse statutis vix conditis, illico coepisse Dignitates, officium suum praetermittere, conventuales missas suis vicibus canendi. Nuda autem dignitatum affirmatio, cum suspecta sit, pro nihilo habenda est. Sed quamvis huic affirmationi, contemptis iuris regulis, legitimae probationis vis tribui debet, demonstrari certo potest, dignitates, quae tunc temporis erant in Derthusiensi capitulo, numquam intendisse animo, ut usucaperent immunitatem, quam hodie successores inhiant. Patet enim eodem anno, quo statuta condita sunt, Archipresbyterum, gravibus allegatis causis, capitulum exôrasse, ut sineret se solutum esse munere celebrandi missas conventuales: compellatum autem an persuasum haberet se hac obligatione teneri, id absque haesitatione affirmasse, subiungentem, beneficium se expeti turam non fuisse, si ius sibi esse arbitrasset. Quamobrem argumentari licet, tunc temporis dignitates si missarum celebrationem delectarunt, idcirco id fecerunt, quia vel privilegium legitime obtinuerant, vel falso opinabantur satis esse capi-

[*Latin ed. p. 423*]

DERTHUSIEN. 423, granted indulgence, so that they might be absolved from this obligation. Indeed, it should be noted that, in the canonical chap-

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ters, in the year 1852, when the matter of establishing statutes was discussed, the dignitaries did not oppose the imposition of the office of celebrating conventual Masses upon them, but rather this provision was approved by the unanimous consent of all, and indeed, the dignitaries themselves, with a solemn oath, promised to observe the statutes. However, according to the opinion of the doctors, one cannot acquire immunity by prescription if one acknowledges the obligation, and only believes that some privilege was imposed upon oneself, but not upon one's successors; Engel, coll. univ. iuris. part. II, lib. IV, tit. XVI, § 2, n. 18. Now, since it is permissible to suspect that what has been said about these first dignitaries applies to the second, which followed the first, it would be necessary to inquire as to the time when these latter began to possess the freedom, which is the foundation of prescription. However, it is certain that this time must be determined by the period during which the first dignitaries lived; therefore, the prescription of forty years, and probably even thirty years, has certainly elapsed. Finally, it must be noted that this prescription has not been interrupted once, since the dignitaries have often reminded the canons, so that, mindful of their office, they would return to the strict observance of the statutes. Furthermore, the oath taken by all the dignitaries certainly interrupts the prescription. All of these things, according to the advocate, suggest that custom cannot be invoked by the capitulars, unless it is reasonable and legitimately prescribed. The advocate believes that this custom cannot be considered reasonable, based on what has already been said about the nature of this immunity, which harms ecclesiastical discipline. Nor is this custom legitimately prescribed, the advocate maintains, adhering to the opinion of those who believe that a period of forty years is required. Arg. cap. 15 de praescr., cap. 3 de causa poss. ei propr., cap. 50 de elect.; Glossa in cap. ult. h. tit. de cons. The authority that this opinion claims is demonstrated sufficiently by the names of the writers who support it, among whom is Fagnanus, comm.

[*Latin ed. p. 424*]

424. DERTHUSIËN, in the Decrees, in chapter "Treguas de treg. et pace," numbers 40 and 67; the Abbot, in the final chapter of the title concerning councils; Imola, in the aforementioned chapter "Treguas," number 13; Diana, page 6, treatise 5, reason 2. However, it should be considered that custom might be found to be contrary to the law within a shorter time: the Dignities have not perceived any obstacle, and have certainly prevented not only the progress of such a custom, but also its very beginning. For, once statutes have been established, the custom prevailed in the cathedral church of Derthusien that all, whether Bishops, Dignities, or Canons, before entering upon a benefice, swore to observe the statutes faithfully. This discipline has been observed with the utmost rigor until the present time. Although it must be admitted that the obligation of swearing, by which

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the observance of the statutes is promised, does not extend to those parts which have been established by ancient custom; it is also certain that this oath, if always and by all clerics interposed, prevents any of the chapters of the statutes from being abolished by contrary custom. This is the received opinion of Scarfantoni on this matter: "These oaths operate so that it cannot be alleged that there is a contrary observance to the statutes, since the promise of observing them opposes the beginning of any contrary custom, to the extent that, as long as those acts approving the statute remain, the contrary custom cannot be said to have begun." See the notes to the canonical lucubrations of Ceccoperi, on title XI, book IV, section 15. This is supported by the Gloss in 7, number 166, section "Temporalia D. de reg. iuris." However, this opinion is confirmed by the Rota, whose responses are to be followed with the utmost reverence, and in which there is no room for doubt. The Giennen Congregation, before Molines, on Monday, February 13, 1702, decree 762, number 21, decided: "That, with an oath taken by each member of the chapter, it not only seems improper to allege non-use or contrary use, but also that a contrary custom could never have begun." The Bichio Congregation, decree 48, number 15; the Othobono Congregation, decree 45, numbers 7 and 10; and the decree 210, number 10, page 17, all concur.

[*Latin ed. p. 425*]

Finally, the speaker, in order to dispel the difficulties, observes that the right to enact statutes cannot be denied to the Chapter, because the sacred canons grant the Chapter full power to freely establish its statutes, provided that these are approved by the Bishop. To those who diligently read the public proceedings, it is manifest that nothing has been altered in this regard, nor has any power been subjected to the jurisdiction of the region. Therefore, since the constitutions of the Chapter were legitimately established by the Chapter, duly approved by the Bishop, and for forty years, so many dignitaries and so many canons who were subsequently co-opted into the Chapter of Derthusia have maintained them, that they solemnly swore under oath to observe them. Furthermore, the Bishop's approval was not invalidated, because it was granted verbally, not in writing. For nowhere is it prescribed that this approval cannot be granted orally. Indeed, the opinion of the most serious authors is that it is sufficient that the Bishop, being present at the assembly of canons while statutes were being discussed, remained silent: "Indeed, when the Bishop is present in the Chapter in which some statute is established, if he is silent, he seems to tacitly consent: and no further approval or consent is necessary, since tacit consent is sufficient." See Ceccobelli, *Lectio Canonica*, Book IV, Title XL, paragraph 11, or that a general vicar of the Bishop has added the words: "for it is presumed that the Bishop has knowledge of these matters and approves them," ibid., paragraph 12. But although the Bishop's approval

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is desirable, in this matter, the statutes are nevertheless valid. It has been established that, although initially invalid, these statutes become valid if the Bishop knowingly does not object to them for forty years. See Ceccobelli, ibid., paragraph 14. Finally, the Bishop's approval was not necessary in such decrees, which concern the internal governance of the choir, since they are perfectly suited to common law. All authors state: "To the canons... from the moment of their establishment, the power is conferred by common law to freely establish certain statutes concerning matters of lesser importance, or pertaining to the good order and governance of the Chapter, or concerning matters which are regulated by common law, by amending the canons or the Pontifical regulations."

[*Latin ed. p. 426*]

426 DERTHUSIËN – "obsessionem constitutionis." Glossa in c. Constitutionem* verb. statutum de verb. signi f. in 6, cap. Cum accessissent 8 de const., cap. Dilectus de cleric. non resident., arg. cap. Ex litteris 1 de const.; Ceccoperius lue. can. lib. IV, tit. X, § 43, et tit. Xl, § 1; Reiffenstuel ius can. univ. ad tit. de const., § 4 n. 88, qui plures affert Rotae Romanae sententias. Hisce utrinque relatis, propositum fuit dirimendum 9. Dubium: An Dignitates teneantur Missas conventuales celebrare et peragere servitium hebdomadarum chori et altaris ac reliqui canonici in casu. RESOLUTIO. Sacra C. Concilii re disceptata sub die 1 Septembris 1 8 9 4 censuit respondere: Perpensis omnibus, affirmative. E x QUIBUS COLLIGES: I. Quando agitur de tollendo iure uni et acquirendo alteri, praescriptione opus esse, non consuetudine. II. Etenim per consuetudinem itur contra vel praeter ius commune; per praescriptionem agitur insimul de praeiudicio tertii; cui, ut discrimen afferatur, vera praescriptio adesse debet, non consuetudo. III. Differre inter se consuetudinem et praescriptionem patet; nam consuetudinis, fundamentum est assensus, saltem praesumptus, legislatoris, dum praescriptio tota innititur in possessione vel quasi iuris possessione, certo modo, et certo tempore habita. IV. In themate videri agi de praescriptione; eo quod Canonici sive ex iure communi, sive ex capitularibus statutis anni 1 8 5 2 ius acquisiverant, ut a Dignitatibus coadiuvarentur in explendis muniis canonicalibus. V. Praetensam immunitatem Dignitatum legitima praescriptione acquiri non posse; quum ex Doctorum sententia praescribi nequeat contra disciplinam ecclesiasticam.

Translation:

426 DERTHUSIËN – "the obligation of the constitution." Glossa in c. Constitutionem* verb. statutum de verb. signi f. in 6, cap. Cum accessissent 8 de const., cap. Dilectus de cleric. non resident., arg. cap. Ex litteris 1 de const.; Ceccoperius lue. can. lib. IV, tit. X, § 43, et tit. Xl, § 1; Reiffenstuel ius can. univ. ad tit. de const., § 4 n. 88, who cites several opinions of the Roman Rota. With these two points presented, the matter to be resolved is: 9. A Question: Whether Dignitaries are obligated to celebrate conven-

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tual Masses and to perform the weekly service of the choir and altar, and other canonical duties, in this case. RESOLUTION. The Sacred Council, after deliberation on this matter on September 1, 1894, decided to respond: After careful consideration, affirmatively. From the following points, this conclusion is drawn: I. When it is a matter of taking away a right from one and acquiring another, prescription is required, not custom. II. Indeed, custom proceeds against or beyond common law; prescription involves a prejudice to a third party; to which, in order to establish a distinction, a true prescription must be present, not custom. III. It is clear that custom and prescription differ; for the foundation of custom is the assent, at least presumed, of the legislator, while prescription is entirely based on possession or quasi-possession, held in a certain manner and for a certain time. IV. In this matter, it appears to be a question of prescription; because the Canons, whether by common law or by the capitular statutes of the year 1852, had acquired the right to be assisted by the Dignitaries in the performance of their canonical duties. V. The alleged immunity of the Dignitaries cannot be acquired by legitimate prescription; because, according to the opinion of the Doctors, one cannot prescribe against ecclesiastical discipline.

[*Latin ed. p. 427*]

DERTHUSIEN. VI. From the Constitution of Benedict XIV: It is always commanded that all dignities and canons of the same Church shall attend the sacred conventual Mass, in their respective turns. VII. One cannot rightfully claim a dispensation from the canonical hours; and even less so from the conventual Mass, which is the most important part of the divine office. VIII. Therefore, more is detracted from divine worship by the non-celebration of the conventual Mass than if the canonical hours were not celebrated. IX. And therefore, no one can claim that a custom, even one of long standing, justifies the non-attendance of the conventual Mass, because it ought rather to be called an abuse and corruption, than a legitimate custom. X. Dignities cannot be based on good faith; because it is not permissible for them to ignore the obligations which they swore to fulfill; and to these obligations must be added that, against the laws, good faith is not presumed, and a mistake of the law completely invalidates any prescription. XI. When it is not a question of avoiding damage, but of obtaining profit, it seems clear that the legislator preferred to deny rather than to allow, that his constitutions be violated by the negligence of private individuals. XII. Oaths to observe the statutes operate, according to the Doctors, so that one cannot allege contrary observance against the same statutes; because this promise opposes, from the beginning, any contrary custom.

ASCULANA DE SERVITIO CHORALI (Ascoli concerning choral service). On June 16, 1894. Through summary petitions, the canons of the cathedral church of Ascoli state: that they enjoy three months of vacation from choral service; of which two are by turn, the third at their election.

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COMPENDIUM FACTI (Summary of the facts).

[*Latin ed. p. 428*]

428 ASCULANA: Quia ad cleri est paucitas, necesse est ut, praeter officia choralia, complura sacra officia adimpleant, quae cum officiis choralibus minime conveniunt; et ideo saepe accidit ut alia postponantur dum aliis fiat satis. Propter hanc rem, postulatum est ab Apostolica Sede quatuor vacationis mensium, loco trium: quo facilius etiam aliis officiis satisfiat, quin chori servitium detrimentum capiat. Episcopus, pro voto et informatione, uti de more, interrogatus ita respondit, die 13 Martii 1894: "Officia, quae requirunt maiorem laborem et studium, ad praesens in hac civitate commissa sunt praesertim canonicis huius insignis cathedralis basilicae, ob cleri regularis et saecularis deficientiam. Verum est meus vicarius Generalis, cancellarius episcopalis, rectores in duobus Seminariis et directores spirituales, scientiarum magistri, uno tantum excepto, nec non monialium confessarii, in magna parte, sunt canonici. "Chorales vacationes ita sunt distributae ut per turnum quisque suam hebdomadam habeat, et ea frui debet dum contingit et non aliter; cum vero numerus hebdomadarum, propter tempus a lege exceptum, tres menses conciliares in anno non attingat, quisque addit tot dies ad beneplacitum, quot sunt necessarii ad tres menses conciliares complendos, qui dierum numerus variat inter viginti, vel quinque et viginti. "Ob rationes expositas, hoc breve tempus non sufficit, ut quilibet ex canonicis suis diversis muneribus facere satis et ut aliquando honestam recreationem sumere possit, praesertim cum hebdomadales vacationes per turnum accipiendae sint: eapropter canonicorum petitio videtur mihi honesta, et eique favendum esse submisse putarem."

Disceptatio Synoptica: Si ius commune et S. C. C. iurisprudentia recolantur, canonicorum petitioni obstare videtur in primis scitissimum iuris principium; nempe unumquodque beneficium dari pro-

[*Latin ed. p. 429*]

The Asculan official must most religiously fulfill the office to which he has been appointed, and afterward undertake other duties if time and strength permit. Therefore, although the Council of Trent, in Session 24, chapter 12, concerning canonical institutions, granted three months of vacation, it expressly cautioned that the constitutions of those churches which require a longer period of service must be preserved. Following these precedents, the Sacred Congregation of Clerics, adhering strictly to the service of the Church for more than nine months, has denied a three-month vacation, as testified by Fagnano in chapter "Licet," number 48, and in the question "De praeb." However, because judgment must be made not from the heights of the law, but with the greatest consideration for equity, the most wise Sacred Congregation, tempering severity with leniency for various reasons, especially for the spiritual good of the faithful, has

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reduced the service of the choir to half-monthly or third-monthly intervals, as is seen in S. Severi, July 13, 1725; in the service of the choir of Castri Maris, July 30, 1735; in Tranen, November 22, 1738; in Civita Castellana, August 6; in Fermo, service of the choir, August 4, 1817; and in Conversana, December 20, 1834. However, in this case, so that the divine worship may not suffer detriment, a clause is usually added, stating that all must serve during the seasons of Advent and Lent, and during other important celebrations within the year, as, among other things, is seen in Catanzaro, September 5, 1699, in which an indulgence was granted, so that the canons might serve half-monthly, but so that on Sundays and feast days, and during the seasons of Advent and Lent, and the octaves of the Nativity of the Lord, the Paschal Resurrection of our Lord Jesus Christ, and the Most Holy Body of Christ, those who are not serving beyond the half-month must be obligated to serve at Masses and Vespers. With this arrangement, the Sacred Congregation has judged that the service of the choir is better served than by extending the months of vacation to four or five; because in this way there is always a certain number of canons serving; and elsewhere, where half-monthly or third-monthly service is in effect, a three-month vacation is not permitted, as is fitting, and was defined in Castri Maris on July 30, 1735, and in Capua on December 3, 1739. Furthermore, given the expectation of a shortage of priests in Asculana, Estremadura.

[*Latin ed. p. 430*]

430. To the diocese of Asculum, it appears that a temporary reduction of the choral service can only be granted. With these considerations, the question was raised as to what response should be given. RESOLUTION. The Holy Office, after deliberation on June 1, 1894, decided to respond: "For a period of no more than 15 days, with a caution from the Bishop and the Chapter, lest the reduction of the choral service cause detriment; for a period of five years, if so it should be, except during the seasons of Advent and Lent."

FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS, No. 1-v, OF ST. JOSEPH OF COSTA RICA, CONCERNING REMOVAL, SUSPENSION, AND RESTORATION OF PENALTIES. Dated August 24, 1894. SUMMARY OF THE CASE. The priest, Olympius Zill Desilles, from the diocese of SÃ©z in France, arrived in the country of St. Joseph of Costa Rica (Central America) at the beginning of the year 1891. There, he was ordained by Bishop Bernard Thiel and first held the office of professor and confessor in the Seminary, and then was appointed chaplain to the nuns of Sion, residing in the same country. However, the aforementioned priest did not remain long in these offices, for on June 15 of the same year, the Bishop deprived him of the office of Master in the Major Seminary and of the office of confessor to the students; then, on July 5 of the following month, he removed him from the office of chaplain to the

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nuns; and finally, on October 12 of the following year, he suspended him from the celebration of the Mass and other ecclesiastical functions, until he should leave the diocese. Unable to bear the imposed penalties, the priest, Zill, presented his complaints three times to the Holy See, demanding the restoration of his rights.

[*Latin ed. p. 431*]

431. Saint Joseph of Costa Rica: We shall examine the damages claimed, resulting from the loss of offices, from which he could not be deprived without a violation of the contract initiated by the parties, and also the declaration of nullity imposed by the suspension. However, when the appellant Zill accused not only the Bishop of Saint Joseph of Costa Rica, but also the nuns of Sion in that city, and a certain priest, Diringer, chaplain of the primary house of said sisters in Lutetiae, Paris, who had been instrumental in Zill accepting the position of chaplain, it became necessary, by decree of the Holy Congregation of Bishops and Regular Canons of February 13, 1894, to separate the appeal of the priest Zill and to determine it individually. Indeed, on the 15th of the same month, he presented a statement of damages amounting to 26,290 livres against the Bishop, 4,700 livres against the nuns, and 2,000 livres against the chaplain Diringer, for a total of 32,990 livres. Subsequently, he increased these damages with new claims amounting to 10,000 livres, requesting 10 livres per day until the decision of the case, and that the parties involved be held jointly liable for the total amount of damages. Therefore, in the present matter, concerning which deductions have been made, there are three points of interest, not only for the Bishop, but also for others involved: the deprivation of offices, the suspension based on informed conscience, and the restitution of damages.

Synopsis: In his published allegations, he first discusses the reasons that motivated the Bishop to impose the aforementioned penalties, and he attempts to demonstrate that these reasons were nothing more than hatred and vengeance. He states that the primary cause of the Bishop's anger stemmed from certain observations made by himself, namely that the Bishop had permitted a professor from the seminary to associate with a cemetery containing the remains of a Protestant, and that 26 propositions, some of which were favorable to the priest Zill, were published in a public gazette.

[*Latin ed. p. 432*]

432 Saint Joseph de Costariga, concerning matters of morals and discipline. Another cause of the Bishop's anger, according to Zill, stems from a dispute arising from the fact that the Bishop wished to pay the professor in the Seminary a monthly salary of 20 scudi, while Father Zill maintained that, according to the agreed contract, he was owed 25 scudi. From this arose the anger and fury that the Bishop displayed, ultimately dismissing

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him from his position as Professor and Confessor in the Seminary. In a similar manner, Father Zill recounts that his removal from the office of Chaplain to the Nuns was due to the fact that, having been well-received by the President of the Republic, he worked diligently with him to restore the concordat between the Holy See and the government of Costarica, and to obtain an Apostolic Delegate; this matter so irritated the Bishop that he not only deprived him of the aforementioned office, but also attempted to discredit him as insane through public newspapers. Finally, according to Father Zill, the culmination of these punishments and injustices was the suspension imposed upon him by the Bishop, based on a false pretext, due to an appeal or recourse that he had made to the Holy See. Therefore, based on the aforementioned and other matters reported, he concludes that he is the victim of the Bishop's anger. Furthermore, he challenges the validity of the dismissals, arguing that they are contrary to existing contracts. Indeed, a letter from the Superior of the Nuns of Sion in Costarica to the Superior General in Paris reveals that the Bishop had promised the Nuns a chaplain who would serve them, and who would reside in the Seminary with a monthly salary of 25 scudi, including food and lodging, while the Nuns, for their part, promised to pay the chaplain 40 scudi each month, including travel expenses. This office, which had previously been refused by a certain Barauteil, was subsequently accepted by Father Zill through the mediation of Diringer, and the Nuns ratified the agreement. Following this agreement, the acts of appointment to the aforementioned offices took place: Father Zill came from distant regions of Galliae to Costarica, and for the first five months, he sat at the same table as the Bishop. All of this, Zill adds, points to the height of evidence.

[*Latin ed. p. 433*]

SAINT JOSEPH DE COSTARIGA 433. The bilateral dispute concerns an existing situation that could not be violated by the opposing party. Speaking a third time about the suspension, he laments that this penalty was imposed upon him only a few days after the Bishop had given a favorable testimony regarding his morals, and also after he had given 30 scudi for the alms of the Mass, with which he could sustain his life. The cause of this sudden change is not to be sought in the bad information received from the French Legation in Rome concerning his morals, as the Bishop would have it, but rather in a certain recourse, which the priest Zill says was transmitted by the priest Diringer to the Holy See, according to the law, so that it could be sent to the Holy See; however, this priest, treacherously, returned the matter to the Bishop. Furthermore, he notes that the aforementioned suspension, which, according to the Council of Trent, Session XIV, Chapter 1, on Reforms, must be imposed in cases of hidden or difficult-to-prove offenses, cannot be sustained in this case, since the offense for which it was imposed is, according to the testimony of the Bishop himself, a public one;

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therefore, the priest Zill urges the condemnation of the Bishop to repair all the damages he has suffered, both from the aforementioned removals, and from the enormous expenses he has incurred for the sustenance of his life, and indeed in the sum indicated above; he also urges that the nuns of Sion in Costa Rica be condemned to refund him the salary of three years, with interest, and other emoluments, according to the obligation assumed by them. Although, in the case of the priest Diringer, it may not be permissible by any law to demand compensation for damages, nevertheless, it is asserted that he must be compelled by another means by the Holy Congregation, because he certainly deliberately intercepted the recourse intended to be sent to the Holy See, and returned it to the Bishop; and if the Holy Congregation does not wish to condemn him, at least he requests the permission to bring him before the civil tribunals.

THOSE WHO ARE OPPOSED TO PRIEST ZILL DESILLES. Otherwise, the opposing party feels. And first, the Bishop denies that he acted in this matter out of anger or hatred, but rather maintains that he has been exceedingly patient, even against the judgment of the entire clergy. *Acta*, Volume XXVII, page OCCXIX, 28.

[*Latin ed. p. 434*]

434 Saint Joseph de Costariga, who demanded a prompt and severe punishment for the priest Zill: Furthermore, in his informative statements, he maintains that no contract or promise whatsoever was made towards the aforementioned priest, and he explains the matter as follows: on March 18, 1890, the nuns of Sion in Costarica declared that they were prepared to receive a chaplain from Gallia, who would serve them in the sacred functions, and they requested the Bishop to grant him some assistance to fulfill the assignment promised by the nuns: the Bishop expressed his intention to do so by offering him a position as a teacher in the minor seminary with a monthly salary. On the 25th, in place of the priest Baruteil, who was then serving as chaplain to the nuns, arrived the priest Zill, whose name was not known to the Bishop: hence, the Bishop inquires by what right the aforementioned declaration of intent can be considered as a contract. But, assuming that a contract existed, even though it was not formally agreed upon, the Bishop contends that he has already fulfilled the obligation assumed, since he offered the priest Zill a school in the minor seminary, which the priest refused; and if he later offered him the position of Professor in the major seminary, it was not out of any obligation assumed, but out of pure benevolence: furthermore, the aforementioned facts, the Bishop states, are confirmed by sworn and trustworthy witnesses. Then, the Bishop explains the reasons that led him to inflict the aforementioned penalties and suspension upon him. And regarding the removal of the priest Zill from the seminary for two reasons, namely, the need to restore peace among the superiors of the Institute and discipline among the students: the priest

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Zill was inciting the young men's minds to sedition against the superiors, especially by reproaches and insults directed against the Rector of the seminary, so that the latter was forced to resign from his office: the Bishop, rather than dismissing the Rector, who was esteemed and deserving of praise, considered it better to expel the troublesome priest. Furthermore, regarding the removal of the priest Zill from the office of chaplain of the nuns, the Bishop states that it derived from the priest himself.

[*Latin ed. p. 435*]

OF SAINT JOSEPH OF COSTARICA. 435. A most deplorable manner of acting towards the Nuns: for these had presented a double appeal against the Chaplain, one to the Bishop and another to the French Consul; hence, his continued service in the office had become impossible. Finally, explaining the reasons for the imposed suspension, the Bishop states that the primary cause was the prohibition made under threat of censure, forbidding the aforementioned priest from publishing a certain writing, which was considered scandalous and most harmful to the Nuns. The priest, Zill, refused to obey, published the writing, and therefore the censure of suspension remained in force, imposed by the Bishop for four reasons: 1. Due to machinations perpetrated against him; 2. Due to an attempt to create a schism among the clergy of Costarica; 3. Due to a public scandal; 4. Due to damage caused to the religious institute. Having explained these matters, the Bishop concludes that the question of compensating for damages is resolved, since neither can the damages be remedied by means of a contract, which is entirely lacking, nor by means of the removals and suspensions, which were imposed for serious reasons. The Nuns and the priest Diringer, called to testify in the case, also hold this opinion regarding the restitution of damages. The priest Diringer briefly defends himself, noting that 1. he believed he was exercising an act of charity by recommending the priest Zill to the Nuns of Sion in Costarica as Chaplain, although this opinion later proved to be mistaken; 2. that if he did not forward the appeal presented by the priest Zill against the Bishop to the Holy See, as the appellant had requested, he acted lawfully, since he did not wish to participate in a condemned undertaking; furthermore, he claims to have forwarded the aforementioned appeal in August 1893 to the same Zill; therefore, he cannot understand how the question of damages can arise. The Nuns, for their part, maintain that they cannot in any way be held liable for the restitution of damages. They admit that a certain agreement existed in writing to have the priest Zill as Chaplain; however, they reject the idea of any contract or strict obligation, stating that this is true to such an extent that even the tribunals...

[*Latin ed. p. 436*]

436. S. IOSEPHI DE COSTARIGA, ad quae civiles res sacerdos Zill ap-

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pellavit, in hoc negotio omnia vestigia contractus excludunt. Postea, Moniales, tota fide, in earum defensione, opera sacerdotis Diringer exhibita, enarrabant rationem scandalosam et imprudentem agendi sui Cappellani; plura edunt de pessimo ipsius character, de sermonibus contra Moniales habitis coram earum alumnis seu educandis, de scandalosa interruptione missae quadam die dominica, et de aliis id genus, ita ut impellatae essent ad acceptandum alium Cappellanum ab Episcopo designatum. Tum Zill contra hanc provisionem recursum habuit ad tribunal ecclesiasticum, a quo repulsus appellavit ad tribunal laicum, sed pari exitu: et Moniales processus expensas et advocati honorarium propter inopiam actoris exsolvere debuerunt. Hinc Moniales concludunt ad nulla damna reficienda teneri, cum continuatio sacerdotis Zill in officio evaserit omnino impossibilis: potius ipsae indemnizandae essent a sacerdote Zill, non solum ob expensas a se iniuste solutas, sed etiam ob damna ab Instituto passa sive in ordine morali sive in ordine materiali, et rem comprobare adnituntur serie factorum quae brevitatis ergo omittuntur. Hisce summatim praehabitis, proposita sunt solvenda sequentia:

I. An et quomodo sustineantur provisiones dierum 5 Iunii et 5 Iulii 1891, quibus Episcopus de Costarica privavit sacerdotem Zill Desilles officio Professoris in Seminario et Cappellani in Instituto Sororum de Sion?

II. An et quomodo sustineatur suspensio inflicta in casu?

III. An et quae damna compensando sint praefato sacerdoti ob dictas remotiones et suspensionem in casu?

RESOLUTIO. Sacra Congregatio Episcoporum et Regularium, die 24 Augusti 1894, omnibus mature perpensis, rescripsit:

Ad I. Affirmative in omnibus.

Ad II. Attentis omnibus in casu concurrentibus, affirmative in omnibus.

Ad III. Negative in omnibus, et amplius.

[*Latin ed. p. 437*]

FROM THE SACRED CONGREGATION OF RITES, 437. LETTER from the Prefect concerning the use of the bicycle, commonly called a "velocipede," to the Most Illustrious and Reverend Bishop of Izatmari. Most Illustrious and Reverend Lord, as a brother. This Sacred Congregation of Bishops and Regulars has carefully examined the report submitted by Your Eminence concerning priests who use the aforementioned bicycle. Therefore, the same Sacred Congregation praises and commends the zeal and prudence of Your Eminence, for the prohibition of such use not only protects the priests themselves from bodily dangers, but also prevents scandals among the faithful and derision of the priests themselves. Meanwhile, I pray for you from the Lord all good things and prosperity (1). To Your Eminence, as a brother. Rome, 28th of September, 1894. I. CARD. VERGA, Prefect. FROM THE SACRED CONGREGATION OF RITES, GENERAL

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DECREE concerning Commemorations in Vespers. Since the Sacred Congregation of Rites has already established an order for the celebrations of commemorations in Vespers, especially after the "duplicia" and "semiduplicia" were restricted and reduced to the level of "simplicia" according to the altered rubrics; in order to resolve all controversies regarding this matter, the same Sacred Congregation declares and establishes: After the daily prayer, before all others, a commemoration must always be celebrated of another feast of any rite whatsoever, which coincides, if it occurs; then the remaining commemorations, according to the order indicated in the General Rubrics of the Breviary. (1) Please note that the Holy See has not formally expressed a judgment in these letters; namely, whether it is fitting for priests to use a velocipede. But the Prefect of the Sacred Congregation of Bishops and Regulars has only praised the prudence of the Ordinary, who ordered his own priests to abstain from such use.

[*Latin ed. p. 438*]

438 From the Sacred Rituals, Instruction IX, number 11, or the Table of Occurrences inscribed in the same Breviary, it is prescribed. This order is as follows: 1. of the privileged Sunday, 2. of the octave day, 3. of the double major, 4. of the double minor, reduced to the rank of simple, 5. of the common Sunday, 6. of the day within the octave of Corpus Christi, 7. of the semi-double, 8. of the day within the common octave, also reduced to the simple rank, 9. of the greater feria or Vigil, 10. of the simple. And it was commanded that this be observed. On May 2, 1893. CAI. CARD. ALOISI - MASELLAS. R. C. ALOISIUS, Secretary. Prefect. L. & S. TRIPEPI. DECREE GENERAL: Concerning the Octaves during Lent. The Sacred Congregation of Rites has always solemnly observed the pious observances of the sacred Lenten season, as abundantly shown by the Rubrics, and has given answers to certain doubts proposed to it, prescribing whether to cease or to shorten the Octaves on the fourth day of Cineres and on the Sunday of the Passion, although a special Indult had been granted. Recently, however, when other doubts arose concerning these same Octaves, regarding their celebration, or cessation, or shortening on the other Sundays of Lent, for those who have been granted the privilege of observing them, the same Sacred Congregation of Rites declares and establishes: That whatever Octaves, for the time of Lent, according to other decrees, shall not henceforth be granted, and that those which have been granted from ancient times, not only on the fourth day of Cineres and on the Sunday of the Passion, but also on all other Sundays of Lent, shall be entirely discontinued or shortened. During the entire greater week, all Octaves, without exception, shall remain prohibited, even with any privilege. Contrary decrees notwithstanding. On May 22, 1894. CAL CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation.

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ALOISIUS, Secretary. L. * S. TRIPEPI.

[*Latin ed. p. 439*]

439 FROM THE SACRED CONGREGATION OF RITES OF TRENT. A Doubt Regarding a Consecrated Church. The Most Reverend Bishop of Trent humbly submitted the following doubt to the Sacred Congregation of Rites for a suitable solution: Whether, after the Decree of the Sacred Council held in one session on May 5, 1882 (1), in a consecrated church, of which a large portion of the walls, commonly known as plaster, has been removed, as if it were to be despised, does it require a new consecration? The Sacred Congregation itself, after careful consideration and a unanimous vote by the Liturgical Commission, decided to respond to the aforementioned doubt in the following manner: Negatively, in both respects. And thus it responded on January 11, 1894. CARDINAL ALOISIUS MASELLA, Prefect of the Sacred Congregation of Rites. SECRETARY. DECREE. Doubts Regarding Publicly Sung Litany. Two following doubts were raised in the Sacred Congregation of Rites, namely: I. Which litanies can be publicly recited in churches or public chapels, according to the Constitution of Pope Clement VIII and the Decrees promulgated by his successors? II. Whether invocations, according to the form of litanies, in honor of the Holy Family, the Most Sacred Heart, the Sorrowful Mary, St. Joseph, and other Saints, can be recited in churches or public chapels? Furthermore, the Sacred Congregation, in its Ordinary Session held at the Vatican, and after considering the decree of the Sacred Council cited above (1), which refers to the new encrustation of the church with marble, due to which the old encrustation, commonly known as plaster, on which crosses and signs of consecration were depicted, throughout the entire interior of the church, was removed simultaneously, and not successively, declares that the church in this case does not require a new consecration, and that the crosses should be repainted or affixed to the walls as a testimony of the completed consecration.

[*Latin ed. p. 440*]

440 From the Prefect of the Sacred Congregation for the Discipline of the Sacraments, and after hearing the Reverend Father Dominic Augustine Caprara, Promoter of the Holy Faith, after mature deliberation, it was decided that the following questions should be answered, namely: Regarding I. Only those Litanies which are found in the Breviary, or in the more recent editions of the Roman Ritual, approved by the Apostolic See. Regarding II. Negatively. And thus it was answered on March 6, 1894. Cardinal Aloisi-Masella, Prefect. L. Aloysius Tripepi, Secretary. From the Sacred Congregation of Indulgences of the Order of Saint Benedict. Questions concerning secular oblates. Reverend Father Godehard M. Heigl, of the Order of Saint Benedict, Abbot of Affligen, and Visitor of the Belgian Province of

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the Sacred Indulgences, humbly presents to the Congregation: In Cassinen, an Institute of Secular Oblates was established, with certain statutes approved by the Sacred Congregation of Extraordinary and Regular Affairs on January 17, 1871, and with indulgences granted by a decree of this Sacred Congregation on June 4, 1888. Now, since various doubts have arisen concerning the nature of these Oblates, the humble petitioner requests that the following be clarified: I. Are the Secular Oblates of Saint Benedict to be considered as tertiaries of other Orders? II. Can the Secular Oblates of Saint Benedict be granted the plenary Indulgence with the formula approved by the Most Holy Pope Leo XIII on July 7, 1882, for secular tertiaries? III. Can the Secular Oblates of Saint Benedict become tertiaries of another Order, and vice versa? IV. Should the Secular Oblates of Saint Benedict, who are also tertiaries, for example, of Saint Francis, of Saint Dominic, etc., choose the Order to which they wish to belong?

[*Latin ed. p. 441*]

•FROM THE SACRED CONGREGATION FOR INDULGENCES, 441. The Sacred Congregation for Indulgences and Sacred Relics, having considered the doubts proposed above, and having heard the vote of one of the Consultors, decided that the following should be answered: To I. Affirmative. To II. Negative, without a special privilege. To III. Negative, according to the Decree of this Sacred Congregation of January 31, 1798. To IV. Affirmative, as stated in the Order of the Minor Capuchin Fathers of June 21, 1893. Given in Rome, from the Secretariat of the same Sacred Congregation, on January 15, 1895. IGNATIUS CARDINAL PERSICO, Prefect. L. 8 S. -f- ALEXANDER, ARCHBISHOP OF NICOPOLIS, Secretary. FROM THE THIRD CONGREGATION FOR THE PROPAGATION OF THE FAITH. To the faithful of whatever rite, when a priest or a church of their own rite is lacking, it is permitted to receive Holy Communion according to the rite of the church present in that place. In various regions of the Catholic world, where faithful of different rites are mixed, it is certainly to be deplored that often some remain without a church and a priest of their own rite. Consequently, some of these, who desire to fulfill their own devotion, as well as to maintain and increase the fervor of Christian life through the frequent reception of the Sacraments, find themselves, due to the difficulty of receiving Holy Communion in their own rite, constantly complaining to the Holy See for a privilege to communicate in a different rite, even outside the cases legally permitted; while others, for the same reason, are rather led to a prolonged neglect of the Sacraments, with great detriment to their spiritual life. Moved by these complaints and harmful effects, this Sacred Congregation for the Propagation of the Faith, for the affairs of the Eastern rite, wished to provide a suitable and salutary remedy. Therefore, with the advice of the Most Eminent Fathers of the aforementioned Sacred Congregation, the Most Holy Pope Leo XIII, with the recommendation of

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the Reverend Father Augustine, Archbishop,

[*Latin ed. p. 442*]

442 FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, to the Secretary of the Sacred Congregation for the Propagation of the Faith, in an audience on July 2nd of the year 1893, the following decree was issued and ordered to be promulgated: That the frequent reception of the Sacraments, which are the most efficacious means instituted by Christ the Lord for the salvation of souls, may be promoted more effectively, and that the aforementioned inconvenience may be removed more appropriately, to all the faithful of whatever rite, whether Latin or Eastern, residing in places where there is no church or priest of their own rite, the Holy See grants, from now on, the faculty of receiving the Holy Communion, not only at the point of death and for the fulfillment of the Paschal precept, but also at any time for the sake of devotion, according to the rite of the church existing in the aforementioned places, provided that it be Catholic. It is entrusted to the Ordinaries to ensure that knowledge of the present decree reaches their respective people. Given in Rome, from the halls of the aforementioned Congregation, on August 18th, 1893. F. R. AUGUSTINUS, ARCHBISHOP OF LARISSA. ALOISIUS VECCIA, SECRETARY. FROM THE SACRED CONGREGATION OF THE INDEX, on Thursday, January 25th, 1895. The Sacred Congregation of the Most Eminent and Reverend Cardinals of the Holy Roman Church, by the Most Holy Pope Leo XIII, and by the Holy Apostolic See, concerning the Index of books of false doctrine, and their condemnation, proscription, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on January 25th, 1895, condemned and condemns, proscribes and proscribes, or orders that the following works be referred to the Index of prohibited books, which are: Giovanni Bovio — Cristo e l'altra festa di Purim - with a new preface added to the present edition, with a portrait of the author.

[*Latin ed. p. 443*]

FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, 443, 32nd Thousand, 1894. Naples. Edition of the periodical *Fortunio*, 24, in Pizzofalcone. As condemned according to the Index Rules. Émile Zola – Complete Works. Sentiments of a philosopher on scholasticism in general, and on Saint Thomas in particular – Articles published in the *Ephemerides Nouvelles Annales de Philosophie Catholique* (Garche, Seine et Oise, rue de Suresnes, 13) – Nos. 136, 137, 138, 139, 140 – Months of July, August, September, October, November, year 1891 – Decree of the Sacred Office, February 21, 1894. The author (Father Hilaire of Paris) commendably submitted himself, and approved the articles. Author of the Work – *Life of Saint Polycarp*. – *An Angel of

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the Church of Smyrna*, – and *The Apostle of the Gauls* – by Abbé Octave Mirzan – Priest of the Basilica of Saint John the Evangelist of Smyrna. Poitiers, Imprimerie Biais, Roy et C, 7, Rue Victor-Hugo, 1893. Prohibited by Decree of September 19, 1894. He commendably submitted himself and approved the work. Therefore, no one of any rank or condition may dare to publish, or after publication, to read or retain the aforementioned works, in any place or language, but must deliver them to the Ordinaries of the places, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been related to OUR MOST HOLY LORD POPE LEO XIII by me, the undersigned Secret Agent, HIS HOLINESS approved the Decree and ordered it to be promulgated. In the aforementioned, etc. Given in Rome, on January 26, 1895.

SERAPHINUS, CARDINAL.

TUSCULANUS.

VANUTELLI, PREFECT.

FR. MARCOLINUS CICOGNANI, PROCURATOR GENERAL, O.P., of the Secret.

Place for the Seal.

January 28, 1895: I, the aforementioned, have affixed the aforementioned Decree and have published it publicly in the City.

Vincentius Benaglia, Magister Cursorum.

[*Latin ed. p. 444*]

444 APPENDIX IV. EXHIBENS ACTA SEDIS APOST.; QUAE AUT IAMDIU EXARATA SUNT AUT QUAE TEMPESTIVO LATUERUNT EPHEMERIDUM MODERATOREM. S. C. S. Officii 20 Aug. 1778. — Vic. Ap. Sutchuen. Dubia quoad tabellias progenitorum domi servatas. Est mos apud gentiles cum magna veneratione domi servare tabellam progeni lorum, in qua scilicet legitur: Sedes animae talis... Coram ista tabella duplici vice in anno offerunt vinum, carnes, thymiamata. Porro saepissime evenit, ut dictae tabellae reponantur in loco honorabili domus unius de familia, qui nomine familiae totius tenetur illas conservare; secus enim accusatur a parentibus coram Praefectis de impietate erga progenitores, atque graves propter hoc poenas patitur. Nunc quando gentiles, qui tabulas praedictas domi servant, ad fidem convertuntur, quomodo cum ipsis circa hanc causam agendum est? 1. Possuntne licite illas e domo tollere et tradere parentibus paganis ad quos pertinent? 2. Si non liceat tradere, saltem possuntne monere parentes, ut illas tollant e domo sua? 3. Si non liceat monere, possuntne abscondere, et deinceps tradere Praefectis aut

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parentibus, si ab ipsis ad id cogantur? Profecto si cogantur illas comburere sicuti propria sua idola, timore imminentis sibi poenae, et adhuc in fide debiles, paucissimi erunt, si tamen unicus sit, qui mandatis obtempèrent. 4. Pariter proselyti, qui apud se habent idola aliorum paganorum, quae per modum depositi acceperunt, ad quid tenentur? 5. Denique christiani qui emunt territoria supra quae idola sunt, aut parva idolorum oratoria, possuntne monere gentiles, quorum prius erat territorium, e territorio tollere; ipsisque recusantibus, tenenturne confringere illa et destruere? R. Ad 1, 2 et 3. Ut his dubiis opportuna atque apta detur responsio, distinguendum est num superstitiosae tabellae, de quibus agitur, speciali dominio spectent ad gentilem conversum, vel potius ad alios de familia in solidum, quemadmodum erui videtur ex ipsa facti expositione, ubi

444 APPENDIX IV. EXHIBITING DOCUMENTS FROM THE APOSTOLIC SEE; THOSE WHICH HAVE ALREADY BEEN PUBLISHED, OR WHICH HAVE BEEN TIMELY PRESENTED TO THE EDITOR OF THE PERIODICAL. S. C. S. Office, August 20, 1778. — Apostolic Vicar of Sutchuen. Doubts concerning ancestral tablets kept in the home. It is the custom among gentiles to keep, with great reverence, a tablet of their ancestors in the home, on which it is written: "The seat of the soul is such..." Before this tablet, they offer wine, meats, and incense twice a year. Furthermore, it often happens that these tablets are placed in a prominent location in the house, belonging to one member of the family, who is held responsible by the entire family to preserve them; otherwise, he is accused by his parents before the Prefects of impiety towards his ancestors, and suffers severe punishments for this. Now, when gentiles who keep these tablets in their homes are converted to the faith, how should one act with them concerning this matter? 1. Can they lawfully remove them from the home and hand them over to pagan parents to whom they belong? 2. If it is not lawful to hand them over, can they at least warn the parents to remove them from their home? 3. If it is not lawful to warn, can they hide them, and subsequently hand them over to the Prefects or parents, if they are compelled to do so by them? Indeed, if they are compelled to burn them, as if they were their own idols, fearing the imminent punishment, and still weak in the faith, very few, if indeed any, will obey the command. 4. Similarly, converts who have idols of other pagans in their possession, which they have received as a deposit, to what are they bound? 5. Finally, Christians who purchase land on which idols are located, or small idol shrines, can they warn the gentiles, whose land it previously was, to remove them from the land; and if they refuse, are they bound to break them and destroy them?

R. To 1, 2, and 3. In order to give a suitable and appropriate answer to these doubts, it must be determined whether the superstitious tablets, of which we are speaking, pertain to the special domain of the gentile who has been converted, or rather to other members of the family as a whole, as

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seems to be the case from the explanation of the facts, where...

[*Latin ed. p. 445*]

APPENDIX IV. 445. It is related that, in the name of the entire family, certain objects are to be kept in some honorable place within the house of one of the family members. If, first, they are converted to the faith, then certainly they cannot keep these objects in their homes, nor can they hand them over to other pagan family members, but rather, they must destroy them, hand them over to the fire, and scatter them; and thus, missionaries must teach and command this. However, if the aforementioned objects pertain to the ownership and property of another, then the answer to questions 1, 2, and 3 is this: newly converted Christians are indeed obligated to remove such superstitious objects from their own homes, but they may lawfully hand them over to other family members to whom they belong, or they may warn those family members to remove them and take them for themselves. Just as it would be wrong for a Christian, if such objects were his own and under his authority, to retain them for himself, or to hand them over to others for worship and veneration, which would either be a concealment of the true faith he has embraced, or a participation in superstitious worship; so, conversely, if the objects belong to others, a newly converted Christian, by removing them from his home and returning them to the owner, testifies to the new faith he has embraced, renouncing and rejecting the superstitious worship associated with them, and also fulfills the precept of justice, which commands that what is not ours be returned to its owner. Regarding question 4: In the same way, idols, which a proselyte holds by right of deposit, must be returned to their owners. Regarding question 5: When territories are sold, it appears that, along with the transfer of the property of *fundi* to the buyer, the right and ownership of idols or oratories dedicated to idols located on the property are also transferred. If this is the case, the Christian is obligated to remove the idols and destroy the oratories, or to alter them in such a way that no trace remains of an oratory dedicated to idols, and that all opportunity for superstitious worship is removed. Let it be noted. See Secret Consistorial Office, February 17, 1875. – Vic. Ap. Cocina Orient. Doubts regarding the cleaning of the tombs of parents. I. Among both pagans and Christians, in this Mission of Eastern Cocina, it is customary to clean and repair the tombs of parents, especially in the twelfth month of each year; however, some do so in the eleventh month, or even in the first month of the following year. Since at this time, the autumnal floods have already ended, and the people have more time for work, no other time of year seems more suitable for this purpose. II. However, no day has been prescribed, either by the authorities, or by the provincial prefects, or by the elders of the village, which families, as each

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sees fit, establish for themselves.

[*Latin ed. p. 446*]

446 APPENDIX IV. III. Furthermore, the pagans themselves are quite familiar with the Christian religion, and they openly observe that Christians, in cleansing the tombs of the dead, remove all superstition, so that neither can they, from the manner in which Christians act, receive scandal, nor do they receive it in fact; on the contrary, they show love and reverence for the parents, whose tombs they reject, seeing that they are Christians. Therefore, they are no longer so offended by this holy religion. IV. The Christians themselves have always been, and are, entirely in good faith. There is no one who believes that, in this matter, either for reason or for a time, anything is forbidden, and indeed, I know of no one who, in this instance, performs any superstitious act; on the contrary, they recite prayers for the deceased parents, request the celebration of Masses, and after a family meal, each one returns home in peace. V. Those who, together with the pagans, because they are relatives, affine, or domestic servants, cleanse the tombs of the dead, are in no way compelled to perform any superstitious act. If anyone were to commit such an act (which I do not know, but it is to be presumed that it happens repeatedly), it is only out of human respect, a weak faith, or some other similar reason, and not because of any compulsion from the pagans. VI. Therefore, all, unanimously, tolerated the custom, as previously explained, with regard to persons, manner, and time, following the example of my predecessors. They feared that, if they forbade it, many Christians would not obey (for the matter is deeply ingrained in customs), and would thus commit a serious and formal sin, and that the evil would increase rather than decrease. VII. My venerable predecessor, the Bishop of Metellopolis, was aware of a decree issued to the Mission of Ghen-si in Sinis on July 9, 1792; this decree states: "It is permissible for Christians to cleanse the tombs of the dead and to restore their appearance, provided that this is not done together with the pagans, nor on the same day, but on a completely different day and time." However, the aforementioned Apostolic Vicar did not believe that he should forbid the cleansing of tombs, with regard to persons, manner, and time. Perhaps he thought that this decree, issued for Sinis, where the tombs of the dead are perhaps cleansed in other ways, with ceremonies and circumstances, did not obligate in his Vicariate, or he even feared that a greater detriment to souls might arise from the publication of the decree, which is certainly something to be greatly feared. VIII. Having faithfully explained these matters, I humbly ask: 1. Whether I can tolerate the custom of Christians, who, completely separated from the pagans, cleanse and reject the tombs of their parents during the months mentioned above, if it is feared that, from a

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prohibition, souls might be harmed.

[*Latin ed. p. 447*]

APPENDIX IV. 447. Let those who suffer detriment endure it, provided that no scandal arises therefrom for the pagans, and provided that Christians do not admit to any superstitious practices. 2. Can those who, in good faith and for reasons of kinship, domesticity, etc., as explained above, cleanse tombs together with pagans, without participating in any superstition, be tolerated, even in their good faith, or should I leave them in silence; especially if it is truly to be feared that many, duly warned, will in no way obey, or will only obey imperfectly, and thereby suffer greater detriment? 3. Should those be found who, through weakness of faith and character, or even through impiety, perform superstitious acts with pagans in cleansing tombs, is it prudent to merely reprehend them severely for the sin committed, to punish them severely, and to deny them sacramental absolution until they are corrected and repent, but not to do so by a publicly proclaimed decree as cited above?

R. To 1. According to what has been explained, affirmatively. To 2. Although this concerns a very dangerous matter, especially for those weak in faith, nevertheless, because, as it is asserted, Christians, when cleansing tombs together with the unfaithful, in no way involve themselves in their superstitious practices, nor do they cooperate with them in any way, nor is any specific day appointed for the cleansing; moreover, if the manner or form of this work is not governed by any law or custom (unless perhaps for a purely civil or physical reason), and, given these conditions, the work itself is licit, and a grave danger threatens if it is prohibited, that is, either disobedience on the part of Christians, or persecution on the part of the unfaithful: it can be tolerated that Christians, for reasons of kinship and domesticity, or for some other just cause, cleanse tombs together with pagans, taking necessary and appropriate precautions, among which the most important seem to be: 1. Instructions and warnings, which should precede the time of cleansing the tombs as closely as possible; 2. That care be taken that those who have already fallen into danger do not expose themselves to it again; 3. That it be forbidden to all Christians indiscriminately, which could make it possible that even by their mere physical presence, they might participate in the superstitious rites of the unfaithful.

To 3. As for the first part: according to the prudent judgment of the Apostolic Vicar. As for the second part, that is, not by a publicly proclaimed decree: Provision is made in the response to the second. Instructions of the Sacred Congregation of the Holy Office, June 8, 1859. – On communication with heretics. Communication with heretics can be either in the reprobation of false doctrine or in rites or other signs of the false Protestant sect,

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with scandal to the faith.

[*Latin ed. p. 448*]

448 APPENDIX IV. But, with regard to those from whom the Church forbids communion, this is done so that faith or friendship might not be understood to be endangered. Hence, St. John the Evangelist so severely commands: "If any one come to you and preach another doctrine, receive him not into your house, nor greet him; for he who greets him, communicates in his wicked works" (John 2:10). It is clearly inferred from these words that whatever action expresses a greeting is forbidden, as are liturgical actions which were instituted to signify ecclesiastical unity. Therefore, we read that the Fathers of the Council of Carthage decreed that nothing should be offered to, nor sung with, heretics (as reported by Benedict XIV, *De Synodo*, c. V, lib. VI). It is therefore forbidden in the sacred functions to invite heretics into the choir, to sing alternately with them, to give them the kiss of peace, blessed ashes, candles, and palms, and other external acts of worship, which are rightly considered as signs of interior communion and agreement, both in the active sense, namely, by giving such things to them, and in the passive sense, by receiving them from them in their sacred rites. For in either case, it is the same as saying "hello" to them, and communicating in their wicked works.

However, certain things are now proposed which, when presented simply and without embellishment, do not seem to involve communion in the sacred rites. For those things that are done concerning godparents at marriages, and concerning those who swear oaths in our churches, do not declare any prohibited cooperation with Catholics. Indeed, godparents are said to be those who merely stand beside the betrothed, doing or saying nothing that would be considered a sign of participation in forbidden rites, and thus, if there is no apparent scandal to be derived from this material presence, there is no reason for the missionary's soul to be troubled. Much less should he be troubled if heretics enter our churches, without the invitation or cooperation of any Catholics, to pronounce their oaths. What concern is it to us if the entire action of the heretics is removed from the cooperation of the faithful?

Regarding funerals, missionaries should know that on the fifth day of May, 1755, a response was given that heretics or schismatics are to be tolerated, insofar as they merely exhibit a material presence, for the sake of civil honor towards the deceased, without participating in Catholic prayers and rites. In this, there is no true participation in the sacred rites on the part of Catholics, and, with this excluded, they may proceed according to the dictates of the Constitution of Martin V. To avoid.

[*Latin ed. p. 449*]

449 APPENDIX IV. From the Sacred Congregation of the Holy Office,

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December 5, 1668. It is forbidden to attend the Masses of schismatics. The Bishop of Trebinje is to instruct those Catholics subject to him not to attend the Masses and other divine services in the churches of schismatics, and he is to warn them that, in the case where there is no Catholic Mass available, they are not bound by the precept to attend a Mass.

From the Sacred Congregation of the Holy Office, April 12, 1704. – Concerning the celebration of Mass in the temples of heretics. Most Holy Lord, in order to more easily promote the conversion of schismatics and heretics, and to draw them to embrace the Catholic faith, and with a view to the sacred ceremonies, has benignly granted to the Reverend Prefect or Vice-Prefect of the missionaries, those presently in Ethiopia, the power to dispense, at their discretion and conscience, with the following: to grant to those missionaries the faculty of celebrating the Holy Sacrifice of the Mass according to the Catholic Roman rite, upon altars in the temples of heretics or schismatics in Ethiopia, so that those same altars are used only as bare tables, and are arranged in the manner of Catholics, with a sacred stone, cloths, the image of the Most Holy Cross, candlesticks, and other necessary furnishings for the use of the Holy Sacrifice of the Mass, according to the aforementioned rite; never generally, but in particular cases, in which no other more suitable places are available, and when there is an urgent need to more easily promote said conversion, and furthermore for the consolation of Catholics, and for other just and urgent reasons to be indicated by the aforementioned Reverend Prefect or Vice-Prefect of the missionaries, concerning which they will bear the burden of their conscience.

From the Sacred Congregation of the Holy Office, February 24, 1752. – Regarding communion in divine matters with heretics. In the General Congregation... before Most Holy Lord, the Most Reverend Fathers, X, I, V, and others, the following were proposed, in the place of Kosso, certain doubts sent by the Sacred Congregation of Propaganda Fide to the Holy Office, and explained by the Reverend Father, Archbishop of Bar (Antivari), concerning a certain procession, which is customary in his diocese on the feast of the Body of Christ, in which Catholics walk together with Greek schismatics, and a defense in writing for its lawfulness, from the Acts, Volume XXVII, page OOOXX.

[*Latin ed. p. 450*]

450 APPENDIX IV. To a certain parish priest, Nicholas Giorga, whose opinion the Archbishop himself disapproved of; and also, a decree from Father Bianchi, of the Order of the Minor Observants, a Consultor of the Holy Office, concerning the discussion of the aforementioned doubts. The Most Holy Pope, before the Reverend Consultors departed from the audience chamber, with his customary vast erudition and profound doctrine, explained that the Roman See adheres so strictly to its laws and customs that it cannot, and will not, allow itself to be swayed from them, nor even

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by the contrary opinion of some doctors. Therefore, even though many theologians maintain that a marriage is valid but not consummated, and therefore indissoluble by divine law, nevertheless, because canon law and ecclesiastical custom stand in opposition, it can happen that the Roman Pontiff, in certain cases, can proceed to the dissolution of a marriage that is valid but not consummated. Thus, if anyone were to assert that this power does not belong to the Roman Pontiff, they would undoubtedly deserve to be rebuked for their audacity.

Turning then to the matter of communicating in the sacred rites with excommunicated persons, he explained that the Roman See has always maintained this practice, namely, that, apart from public clerical aggressors, it does not judge any others to be to be avoided, except those who, having been declared excommunicated after a legitimate judgment, are indeed excommunicated. From this, the Most Holy Pope began a discussion of the famous interdict of Sicily, during which there were those in the city who argued and insisted that some who had violated the interdict should be declared excommunicated. Certain individuals were pressing for this declaration, and even Father Tedeschi was urging the same. However, the Roman See did not proceed to this point until, after legitimate acts had been completed concerning this matter, it was truly determined who were the violators of the interdict.

Furthermore, he added that communicating in the sacred rites with heretics cannot, nor should, be declared to be forbidden in every circumstance, and that this is the case even in marriages begun between a Catholic and a heretic; and that this can be demonstrated by those pontifical Constitutions by which heretics were invited to the Council of Trent, with a guarantee of their safety. Finally, it is worth noting that it is commanded to Catholic priests that they should not cease from the sacred rites, even if notorious heretics come to the churches; from which it is understood that passive communication in the sacred rites is permitted, contrary to the opinion of Tagnani, who erred in this matter.

Regarding the Constitution of Martin V, *Ad evitanda*, it was said that it does not contradict that which is found in the acts of the Council of Constance: for we cannot deny that Martin V was asked to establish it for at least five years; and that the Pope himself intended to promulgate it without any limitation of time whatsoever. He added the aforementioned Constitu-

[*Latin ed. p. 451*]

APPENDIX IV. 451 and are merely counted among the decrees; and one should not be surprised when a law, once established, is adopted again, especially when it has been found to be beneficial, consistent with reason, and in conformity with ecclesiastical discipline; therefore, he warned all those to whom it pertains to cast a vote, or to express an opinion, that

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in writing, they should not go beyond the bounds of moderate criticism. Finally, the Most Holy Father turned to the matter of the Greeks, and with admirable eloquence, he taught that when the Gauls and Venetians occupied Constantinople after their victory, Innocent III, renowned not only for his wisdom but also for his shrewdness and skill, immediately sought to provide for a Latin Patriarch, appointing Morosini. From that time on, all the Greeks obeyed the Latin bishops, and things were not only more orderly, but also closer to the purity of the religion. However, as the number of Greeks increased under the Latins, they demanded that they have a pastor, or bishop, of their own nation. Pope Pius II and Leo X acceded to the requests of the Greeks; and from that time on, having cast off the yoke and raised their heads, they began boldly to foment schism, and the purity of divine worship began to be stained and defiled. Pope Pius V wished to remedy these evils by recalling the Greeks to the paths that Innocent III had established; but the Greeks, emboldened by the constitutions of Pius II and Leo X, refused to listen to Pope Pius IV. Therefore, when the Greeks were allowed to have their own bishops, it came to pass that, especially in places subject to the Venetian Republic, both a Latin bishop and a schismatic Greek bishop were found. Between them, not only civil, but also religious communion, or intercourse, was established. In this regard, he recalled the famous procession of Corcyra, which is usually held on the feast of Corpus Christi, in which Greeks and Latins walk side by side, the Greeks on the right and the Latins on the left, and finally, the Latin Archbishop walks on the right, and the Greek bishop on the left. This solemn and mixed procession displeased the Reverend Father Dominick Quirino, who at that time presided over the Church of Corcyra, and in order to bring the matter to the attention of the Roman Pontiff, he sent a public petition, depicted in a painting, to Rome, which was kept for a long time in the Quirinal Palace, and now occupies a more suitable place in the Castel Gandolfo. From this, he requested that the Roman See forbid this procession. The true response was that if, from this prohibition, damage, disturbance, and other evils could be prudently foreseen, it would be better to tolerate it than to forbid it. Therefore, the Most Holy Father again stated that this communion with the schismatics could not, in any case, be entirely permissible, and that it was absolutely illicit in every circumstance. Afterwards, after dismissing the advisors and hearing the opinions, he decreed that a letter should be written to the Archbishop of Bar, praising all that he had done to prevent the communion of schismatics with Catholics in the solemn procession of the Most Holy Body of Christ, since such communion.

[*Latin ed. p. 452*]

452 APPENDIX IV. Regarding communion in divine matters, and therefore pertaining to the category of prohibited things; therefore, the following is ordered under penalty of deprivation of his parish, that the parish

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priest Nicholas Giorga may not, in case of disobedience, dare to admit schismatics into the procession. To the extent that "very grave scandals, and disturbances of the same Archbishop, and persecutions against his person, and perhaps even, may God forbid, expulsion," might arise from the proper observance of such provisions, he should act according to his own judgment and prudence, and conceal [the matter], in order to avoid worse evils. S. C. S. Office, May 10, 1753. — Missions in the Peloponnese. Doubts concerning communion in divine matters between Catholics, schismatics, and heretics. 1. Is it permissible for Latin Catholics to grant or allow Greek rite schismatic and heretical priests to celebrate Mass in their churches, and to admit them at the funerals of Catholic deceased? 2. Is it permissible for Greek rite Catholics who do not have a Catholic church of the same rite to partake in divine matters with Greek schismatics and heretics? 3. Is it permissible for confessors or Latin priests to administer the Sacrament of Penance to Greek Catholics who are partaking in divine matters with Greek schismatics? R. To 1. Regarding the first part of the doubt: It is not permissible; especially since the Patriarchate of Constantinople commemorates and celebrates the infamous Palamas. For it is the same as consenting to their heretical rites, and communicating with them in their sacred rites, which are polluted by schism and heresy; or at least, it provides an opportunity for Catholics, when entering Latin churches, to communicate with heretics in divine matters, or at the very least, to give rise to scandal. However, regarding the second part of the same doubt, to the extent that schismatics, accompanying the funerals of Catholics, merely exhibit a material presence, for reasons of civil honor towards the deceased, without participating in Catholic prayers and rites, which is customary for funerals, and without leading the deceased to the tomb: this may be tolerated; but to the extent that they use their own rites in that function, or involve themselves in ours: it is not permissible, nor is it to be permitted. To 2. It is not permissible, because in the case proposed, they may flee to a Catholic Latin church, and in the absence of a Catholic rite priest, receive the Sacraments from Latin priests. To 3. It is not permissible, except in a case of extreme necessity.

[*Latin ed. p. 453*]

APPENDIX IV. 453 For the further instruction of this missionary, and of other missionaries, (His Grace) ordered that the following be transcribed, which the Most Holy Father taught concerning this matter in his Treatise on the Diocesan Synod, book 5, chapter 5, where he writes: "And yet, it is the miserable condition of our times that in many provinces, where heresies either dominate or spread openly, Catholics are forced to converse and deal familiarly with heretics. However, although, according to the present discipline introduced by Martin V in the famous Extravagant 'Ad evitanda,' of which some things will be mentioned below, it is permissible for Catholics to converse freely with heretics, provided they are not expressly and specif-

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ically denounced, and to communicate with them in purely profane and civil matters; nevertheless, Catholics should not consider it permissible to have communion with the same heretics even in sacred and divine matters. Indeed, Paul V, after mature deliberation, definitively declared that it is not permissible for Catholics in the Kingdom of England to attend the temples of heretics or to participate in the rites which they practice, as can be read in two decrees issued by the same Pontiff, one in the year 1606, and the other in the year 1607, in the 3rd Sentences, part 1, which are referred to by Cardinal [number] in article 9, section 4, number 292. We do not ignore that some theologians, in volume 3, disputation 11, absolve Catholics from all guilt who communicate in divine matters with heretics and schismatics who are not specifically denounced, provided that these circumstances concur: first, that a very serious and urgent reason compels Catholics to such communication; second, that the heretics or schismatics from whom the Sacraments are requested are validly ordained and administer the sacraments according to the Catholic rite, without any admixture of a condemned rite; third, that the communication with them in divine matters is not an external profession of a false dogma, as was the case when Paul V forbade all Catholics in England to enter the temples and churches of the Protestants, because he ordered that those who did so should feel that they were deceiving the king by such an agreement; and finally, that the Catholics..." (1) In the 6th book, in the new edition, in which the Pontiff himself has made some changes. (2) The following, which has been somewhat altered in the aforementioned new edition, remains: "Although, by the Canon of the Council of Constance, approved by Martin V, which begins 'Ad evitanda,' and which has always remained in force, notwithstanding subsequent constitutions of the Councils of Basel and Lateran, the discipline has been somewhat relaxed in what pertains to conversing, and even communicating in divine matters, with heretics who are tolerated and are not expressly denounced as being to be avoided, as Gabassut writes in 'De Theoria et Praxi Iuris Canonici,' book 5, chapter 11, numbers 3 and following, nevertheless, Catholics should not..."

[*Latin ed. p. 454*]

454 APPENDIX IV. Communion with heretics in divine matters causes no scandal to anyone. However, the aforementioned opinion of the theologians has its adversaries, and it is not admitted by all as being safe in practice; furthermore, even if it were admitted, all the enumerated circumstances must be present simultaneously and in conjunction, so that the association of Catholics with heretics in sacred matters is entirely free from fault, as taught by Silvius in part 3, St. Thomas, volume 4, question 64, article 6: question 3, conclusion 3; Cardinal de Lugo, *De Fide*, disputation 22, section 1, number 11; Thomas a Jesu, *Tractatus de omnium gentium salute procuranda*, book 8, part 2, section 4, verse: "But there is a greater

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difficulty," page 556; Cardinal Albilius, *De inconstantia in Fide*, chapter 18, number 30 and following; Cardinal Gottus, in 2. 2, St. Thomas, question 4, doubt 6, section 3, number 2, and question 3, concerning those who are not faithful compared to the faithful, doubt 3, section 2. Therefore, it is almost impossible for Catholics to be excused from fault in sacred matters when they associate with heretics and schismatics. Therefore, the Congregations of the Holy See, namely the Holy Office and the Congregation for the Propagation of the Faith, have always considered the communion of which we are speaking to be illicit, and have issued a carefully considered instruction, which, while we were still living in minor orders, and despite all our efforts, was sent to missionaries, stating that "reasons are given for which it is very rare that communion in divine matters between Catholics and heretics can be harmless in practice." S. C. S. Office, December 10, 1757. — Archbishop of Antibar. Concerning the celebration of Mass by Catholic priests in churches usurped by schismatics. Whether the practice should be tolerated that Catholic priests have of celebrating the Sacrifice of the Mass in Catholic churches usurped by Greek schismatics and used by them, or even in those that purely belong to the schismatics. Answer: It is to be held, according to the universally accepted and observed rule, that it is not permissible for Catholics to receive communion in divine matters with heretics and schismatics; however, in certain particular cases, this rule admits of some exceptions, namely, if chapels and altars are separated in the same church, some of which serve only Catholics, and others serve only schismatics; if parts of the same church are separated, and only Catholics celebrate in one, and only schismatics in the other: then the promiscuous use of the church can be tolerated. To the extent that these conditions are lacking, the Reverend and Most Reverend Archbishop can order his diocese to instruct the parish priests to use the altar at the entrance, according to the faculties granted to them in the Formula, and His Eminence intends to grant and renew these faculties again.

[*Latin ed. p. 455*]

APPENDIX IV. 455. Secretum Consilii Sacri, 22 Septembris, 1763. — Concerning whether schismatic Greeks may attend Catholic churches. Whether schismatic Greeks may enter Catholic churches, and there materially assist at their sacred rites. Response: The entrance of Greeks who are not united [with the Catholic Church] to Catholic churches may be permitted, provided that the Sacraments are not administered to them, nor do they in any way participate in the sacred rites, nor have they been invited to such attendance. Secretum Consilii Sacri, 10 Maii, 1770. — Vicariate Apostolic of Smyrna. Concerning Catholics regarding the baptism and sermons of Protestants. Whether it is permissible for Catholics to attend the baptisms of Protestants and their sermons, as well as the marriages and baptisms of Greeks, in which, sometimes by themselves,

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or by others, they even perform the office of godfather. Response: It is not regularly permissible for Catholics to attend the baptisms and marriages, or the sermons of heretics or schismatics. Absolutely, it is not permissible, neither by themselves nor by others, to perform the office of godfather at baptisms which are administered to the children of heretics by heretics. Secretum Consilii Sacri, 29 Ianuarii, 1817. — Saxoniae. Concerning the request for a nuptial blessing from an AcaCatholic minister. Whether it is permissible for a Catholic to request or receive a nuptial blessing from an AcaCatholic minister, even if the AcaCatholic party requires it. Response: Negatively. Secretum Consilii Sacri, 13 Ianuarii, 1818. — Kentucky. Concerning attending the funerals of heretics. 1. Whether it is permissible to attend the funerals and burials of heretics. 2. Whether it is permissible for Catholics to enter the temples of heretics. Response: 1. It is permissible whenever material assistance is rendered for the sake of civil duty, from which Catholics cannot be excused without serious damage or danger, provided that they in no way participate in their rites and sacred ceremonies in any way.

[*Latin ed. p. 456*]

456 APPENDIX IV. Ut autem in pratica periculosa consuetudo adsistendi haereticorum funebribus et sepulchris non temerarius permittatur, Episcopus diligenter inspiciat et serio perpendat si ea facile tolli possint, ne exinde oriatur odium et inimicitia inter haereticos et catholicos, ex quo grave detrimentum catholicis timeatur. Quod si ea pacifice tolli non possint, catholici diligenter instruendi sunt de conditionibus sub quibus, in circumstantiis quibuscumque, permittitur. Nempe permittitur, ut dictum est: 1. Solum praesentia materialis praestita causa officii civilis; ea igitur conditione ut catholici nullum se actum religionis, ac religiosi cultus et ritus, praestare intendant. — Permittitur 2. in casu, quo ab ea eximi non possint sine gravi damno vel periculo; quae circumstantia non adest ubi quis, nescio quid sibi damnum vel periculum imminere, proprio lubitu et electione interesset, nullo adstrictus civilis officii debito. — 3. Permittitur denique ea conditione, ut nullo modo communicent in sacris cum haereticis; igitur nec simul orare, neque se in eorum ritibus immiscere debent, nec luminaria deferre, neque pro defuncti anima suffragia persolvere. Ad 2. Licet, si adeoant merae curiositatis causa, absque ulla communicatione in sacris, in qua talis aditus communiter habeatur pro actu protestativo falsae religionis; quandoquidem sicut profana aedificia, sic et templa haereticorum adire, est actus per se indifferens; qui non nisi a pravo fine, vel ex circumstantiis, fit malus. Malus nimirum fit: — 1. Si quis ea adeat animo adsistendi sacris haereticorum functionibus; — 2. Vel etiam absque tali animo, si ingressus ipse in haereticorum ecclesias aliquam inferat, vel inferre videatur, cum eisdem haereticis in divinis communicationem, hinc et occasionem scandali

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praebeat; — 3. Aut si talis aditus indictus sit ab haeretico gubernatore, tamquam protestatio eiusdem fidei, inter catholicos et acatholicos; — 4. Vel utrumque communiter habeatur veluti tessera unius eiusdemque communionis catholicorum et acatholicorum. — In his igitur casibus numquam licet catholicis adire haereticorum templa, quia numquam licet haereticorum sacris participare, nec propriam fidem simulare. Ubi vero haec omnia absint, et sola curiositate templa visendi moveantur, incúlpate ea adire possunt.

[*Latin ed. p. 457*]

457 FROM THE HOLY CONGREGATION OF THE COUNCIL OF PALERMO CONCERNING THE NULLITY OF MARRIAGE, dated September 1, 1894. Session 24, chapter 6, concerning the reform of Matrimony. SUMMARY OF THE FACTS. Nympha Spina, born in Palermo, a young woman of remarkable beauty, who had reached the age of sixteen, was, in the year 1864, either forcibly taken from her parents' home, or fled from it, and arrived at a rural dwelling with her uncle, Evaristo Branciforte, who was also a citizen of Palermo, where the crime of incest was committed. After three days of anxious searching, the parents, with the assistance of public authority, found their daughter, and placed her in a religious institution called Candelora. Nympha's father and brother threatened the abductor with death, but friends intervened, and they were seen to persuade the father to arrange a marriage between Nympha and Evaristo, believing that nothing would be more effective in avenging the injury done to the family. However, when the consent of the young woman was required, she vehemently resisted all attempts to persuade her, (as she herself stated), declaring that she would never consent to this marriage, either before the Church or before the civil authorities. Subsequently, according to the testimony of the plaintiff and witnesses given in the trial held in Palermo, the parents, acting in the name of the prospective bride and groom, but without Nympha's knowledge, petitioned the Holy See for a dispensation from the impediment of consanguinity, but the petition was made in silence regarding the abduction of the woman; and, since this had been carried out "before the Ordinary of Palermo," new prayers were offered to the Most Blessed Father, in which we rejoice, requesting that the execution of the aforementioned dispensation be requested from the Reverend Cardinal Vicar of the City; which was likewise graciously granted.

[*Latin ed. p. 458*]

458 In Palermo, having obtained these things, Nympha's father approached the religious house, and showed to the daughter the document concerning the arrangement with the aforementioned Bersani Cagiati and his wife, so that they might act on her behalf in contracting marriage,

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and which she was to sign, falsely claiming that it concerned family matters. Nympha affixed her signature, by virtue of which the marriage was celebrated in Rome on October 16, 1864, in the church of Saint Mary in Via. Whatever the case, Nympha was joined to her husband, and they lived together as betrothed for about eight years, with some interruptions, traveling here and there, until Evaristus, burdened by debts and summoned to court, emigrated to foreign regions to avoid punishment, and took another woman in civil marriage, from whom he had children, and of whom nothing has been known for many years. Nympha, after her father's death, on April 25, 1881, approached the Archbishop of Palermo, so that, according to the law, a judicial declaration might be made of the nullity of her marriage, due to the impediment of abduction and lack of free consent. The archiepiscopal court received the woman's petition, and, since the whereabouts of the man were entirely unknown, it first took care to summon him to court by means of a public proclamation, but he did not appear on the appointed day, nor ever afterwards. Therefore, in June of 1881, the court of Palermo began a judicial investigation. First, the plaintiff was examined under oath, before the delegated judge, the defender of the marriage, and the clerk, and she recounted what has been explained above. Afterwards, she presented six witnesses of good standing. Later, at the insistence of the defender of the marriage, a witness from the man's side was heard; however, the mother and Evaristus' sister, although summoned, refused to appear, and presented themselves as contumacious. Finally, on July 8, 1882, a judgment was rendered in favor of the validity of the marriage. The plaintiff appealed to the Sacred Congregation, confident that the judgment would be overturned on three grounds. I. Because the Apostolic dispensation concerning the impediment of consanguinity...

[*Latin ed. p. 459*]

PALERMO, 489, in the first and second instances—there was none: for the petition contained no mention of abduction, which was necessary; it spoke of a voluntary elopement, which was false. 2° Because she gave no consent to enter into marriage with her uncle through a procurator. . . 3° Because Evaristus was morally certain that it had occurred, both from the unfortunate outcome of all the investigations undertaken up to that point, and from Evaristus's own intentions, which he had manifested on several occasions, to take his own life. Then a letter was written to the Archbishop, instructing him to have the man summoned by the fiscal prosecutor, through the insertion of a citation in two Catholic newspapers, which are widely distributed throughout the world. This was done through the newspapers "L'Osservatore Romano," "L'Univers," "La Sicilia Cattolica," and "Le Letture Domenicali"; but, as with the first summons, this also proved to be ineffectual. In the meantime, the woman insisted that the proceedings be dismissed; for it seemed that she herself was joined in a civil union with a

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certain Palmieri, so the entire matter was referred to the Defensor Vinculi of the Sacred Congregation of the Council by the Council. But the fiscal advocate of the same Sacred Congregation replied that there were lacking the extreme circumstances by which the Tribunal is bound to conduct investigations concerning the death of one of the parties; hence the proceedings were again sent back to the Sacred Congregation.

SYNOPTIC DISCUSSION

OPINION OF THE THEOLOGIAN.

Abduction, as all canonists teach, is the violent abduction of a woman from a safe place to another place, where she is under the power of the abductor, for the purpose of entering into marriage. The Council of Trent, Session 24, Chapter 6, lists such an abduction among the impediments that dissolve marriage, stating: "Between the abductor and the abducted, as long as she remains under the power of the abductor, no marriage can be valid. But if the abducted is separated from the abductor and is placed in a safe and free place, and consents to take him as her husband, the abductor may take her as his wife."

[*Latin ed. p. 460*]

460 In Panormitana, it is not said that a kidnapping occurred if prior mutual consent existed, but rather a capture by two lovers, achieved through mutual agreement. In this case, Nympha was not kidnapped, but fled with Evarist. In the proceedings concerning this alleged kidnapping, no testimony is available regarding a visual sighting, but only three witnesses are present, upon whose testimony the entire process rests. According to the testimonies of both Nympha and her mother, the alleged kidnapping occurred before noon, and only a domestic servant of the family heard Nympha crying out; and having received an order from her mother to investigate, she no longer saw the girl. Is it possible? Did the mother not hear her daughter, even though the domestic servant heard her? Is it possible? Did no one come to the aid of the girl crying out before noon? Is it possible? Did the mother, who was ill and unable to leave her house to speak with the alleged kidnapper, later scarcely accept that her daughter had been kidnapped, rising from her bed where she was lying (as the mother herself testified), putting on her clothes, and looking out the window, crying out, and with her eyes searching, asking where her daughter had fled? These are questions that are not easily resolved, but which nevertheless lead to suspicion. Should the testimonies of both the mother and the daughter be considered false? I would answer affirmatively. Authentic testimony is found in letters given by the Bishop through his chancellor on October 4, 1864: in which it is stated that Nympha was not kidnapped, but that

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young relatives, by mutual consent, took her away. Therefore, it is false that Nympha was kidnapped by her uncle; but rather, she was kept hidden away by her mother, so that marriage could be more easily celebrated after the consummation of the incest, as I believe. Moreover, even if the act had been consummated, it would not have been considered a marriage impediment. For, as Sánchez teaches in *Lib. 7, De Matrimonio, Disp. 13, n. 4*, Concina on page 339, paragraph 2, Salmaticenses in chapter 12, n. 131, and others, kidnapping is not a marriage impediment, unless it is done as a cause for marriage. In this case, however, it was not a matter of entering into marriage, but, as the mother, daughter, and witnesses testify, of taking revenge against the girl's father. Those four witnesses, upon whose testimony the proceedings were completed, provide no...

[*Latin ed. p. 461*]

In PANORMITANA 461, mention is made of a marriage being contemplated between Evaristus and Nympha, except for Joseph Chianchiano, who expressed his suspicion, although he did not know whether it was based on any foundation, however slight. The suspicion was simple, perhaps arising from the excessive familiarity of Evaristus with Nympha; such familiarity easily inclines the hearts of those involved towards lust, and more easily determines them to flee in order to satisfy their desires. Therefore, I believe that it is more likely that the familiarity of Evaristus with Nympha was not conducive to entering into marriage, but rather to lust. A rape, which is committed for the sake of lust, does not constitute an impediment to marriage. Therefore, considering the matter from any point of view, I believe that the criterion of rape does not present an impediment, according to the mind of the Council of Tridentini. Finally, Nympha herself does not allege that Evaristus used any form of coercion to obtain the union, nor did the mother testify that she heard from her daughter that Evaristus had forced her to have intercourse. Therefore, it seems most probable that the elopement was a mutual agreement for the sake of lust. Nympha did not elope deceitfully, nor unknowingly, nor was she forced into marriage with Evaristus. Deceit must be proven. It is not enough to simply assert it. There are no witnesses, nor is there any document in the process to prove the deceit in this matter. It could only be deduced from the circumstances, namely, from the alleged resistance of the woman, and from the concern of the parents due to the disgrace arising from the elopement and defloration of the aforementioned Nympha. Indeed, the woman alleges that her father committed deceit when he presented her with the document to be signed, pretending that it contained family matters. It is possible! Nympha did not understand that she was still under the authority of her father, nor that she was not permitted to sign any document under penalty of nullity. But before I accuse the impudent woman of lying, I believe that some things must be considered. Nympha had already been defiled, and for

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six months no one invited her to enter into marriage. On the contrary, Nympha hated...

[*Latin ed. p. 462*]

462. In PANORMITANA, she resided in a house for young women. She recognized her deplorable condition and the moral impossibility of marrying another man. If she was not entirely foolish, it must be concluded that she had yielded to the counsel of her father to marry Evaristus. But to whom was this deception beneficial? Not to the father of Nympha, for he could derive no benefit from a man to whom he had forbidden entry into his house, and whom he detested above all others. Nor was it beneficial to Evaristus, for he would not receive a large dowry from Nympha, and he would suffer no punishment for the crime of defloration he had committed. Rather, it was necessary to consider that it was beneficial to the woman herself. Therefore, it cannot be said that she rejected the man with whom she had voluntarily engaged in intercourse, for such an act always leaves a trace of concupiscence in a woman, and a strong inclination towards the man with whom she has been intimate. Nor should we rely on the testimony of the woman with whom Nympha lived in the house for young women, for the witness, who had been instructed by the very astute Nympha, testified. For Nympha, who swore that she had not committed incest in order to more easily obtain a dispensation, performed the penance imposed for the dispensation to marry. But this is a reliable document to refute the lie. For it is entirely false that Joseph, her father, had presented a forged document to his daughter; rather, he himself, the notary, read the legal document before Nympha and the witnesses, and Nympha, along with the witnesses, signed the document. Where, then, is the deception?

From these statements, it is also clear that Nympha did not unknowingly enter into marriage. Perhaps she could have been ignorant of the time of the celebration of the marriage? But such simple ignorance does not invalidate the marriage. However, it may be objected: Nympha believed that the marriage should be contracted before civil authorities and before her own pastor, and in regard to the sacrament, she rightly believed that it should be celebrated before her pastor; she did not know that it could be celebrated with a dispensation from the Holy See, or by delegation from the Ordinary, or from her own pastor, in another place. Then, as she herself stated, she would have indicated her opposition to either authority when the time for such a celebration arrived. But such ignorance, before the Ordinary of Panormitana, during

[*Latin ed. p. 463*]

In PANORMITANA, the process of annulment could not be substantiated. She had been informed by a legal expert that a marriage contracted through proxies in the City [Rome] was valid. Therefore, Nympha stated

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that a marriage could be celebrated elsewhere with the permission of the Holy See, but she understood that the marriage was to be celebrated in Rome. She gave her free consent to her proxy to act on her behalf in contracting the marriage, and her consent was therefore expressed through the words that her proxy spoke, in her name and on her behalf. Finally, Nympha was not compelled to celebrate the marriage. In her testimony, she does not mention any force used against her or any threat made to her. She believed that she would remain permanently in the institution for young girls. This institution was, in fact, not a career, and she would not remain there for longer than the year during which she was to be removed from her father's authority. But in this state of mind, Nympha could be considered, at the moment of her choice, as every person is constituted in freedom of choice when invited to fulfill the law of the Lord. She must choose either eternal joy or eternal punishment by performing a good action, or by doing evil. Does fear of punishment destroy freedom at that moment, or diminish her judgment? Certainly not. Nympha received no threats from her father, nor did she suffer any reproaches or beatings. Therefore, where is the coercion? Thus, the entire complaint has no other argument than her alleged and demonstrated opposition, which arose after many years, and for which she has not provided a sufficient explanation. Why did she reject the man with whom she had lived for so many years, from whom she had been deflowered? All of this remains hidden. The Consultant (Urara) asks whether any suspicion of revoked consent prior to the execution of the procuratory document can be admitted. He says that the Church judges external acts, not internal ones. But, truly, there is no marriage where consent is lacking. But Nympha gave her consent through her proxy.

[*Latin ed. p. 464*]

464 PALERMO. But if a woman, as is said of a man, is said to be bound by what is said by a woman of equal standing, is the marriage contract valid? The canonists, the theologians of Lugo, *De iis*, D. 12, n. 78, Croix, *Lib.* 6, part. 3, n. 258, and Sánchez, *Lib.* i, Dub. 11, hold that a woman must be taken as wife. In the case of Nympha, who chose a procurator and delegated her to contract marriage on her behalf, she did not give her consent; otherwise, in her appeal to the Panormitan court, she would have revealed her deception, which would have been a valid argument, but she did not do so. Moreover, even if she had pretended, she should nevertheless have taken Bvaristo as her husband, because such a pretense is not presumed, especially since she was not compelled by force or fear to contract marriage with Bvaristo; but neither, after signing, and before the marriage contract was concluded by mutual consent through the procurators. For if retraction is internal, when it is not manifested by words, or by confession before a judge, or by revelation before witnesses, or by actions when betrothal is celebrated with another individual, no suspicion can arise regarding the

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transaction, because a human act is presumed to have been performed according to its nature and truth; and therefore, consent and its perseverance are presumed. In the case of Nympha, she never put her consent in doubt; therefore, on what basis does suspicion arise? But nothing happens without a sufficient reason. What was the reason that determined Nympha to sign the procuratorial document in her name? It was not fear, it was not force; but it was her inclination, expressed by the continued familiarity she had used for years, of which the aforementioned family friend observed in her brother, Nympha. All the preceding events were justifications; all that has been brought forward in contention seems to be a consequence of a woman's indignation against a man who, in England, turned to another woman with whom he had children, whom Nympha, who was barren, did not receive. Therefore, Nympha not only never doubted the consent she had given, but she also persevered in her consent. The very reason by which she gave her consent continued; and therefore, no retraction of this kind should be...

[*Latin ed. p. 465*]

In PANORMITANA, indeed, no testimony was produced. He did not know the time at which the marriage was to be contracted, and habitually persevered in his consent. But if Nympha had opposition to the marriage with Evaristo, and, visited by her mother, was compelled by excessive entreaties; if she detested Evaristo, who was being proposed by his father to remove a scandal, she could easily open her heart to the priests who frequented that place, who could plead her cause; at least, they would have received her protests and revealed them at the opportune time to ecclesiastical authority. It is also invalid to adduce the fiction relating to Evaristo, since, as Nympha herself and the few witnesses present in the process testified, he gave his consent under the pressure of Joseph, Nympha's father, threatening him with death, and under the reproaches of so many members of the Spina family. For he never complained of these pressures, but always kept his wife in his house, and never drove her away from his roof. He was, on the contrary, deserted by his wife, and afterwards was contumacious while the matter of the nullity of the marriage was being discussed. If Nympha deserted him and received hospitality in her father's house, and then returned to him, and the husband received her, then he was not contumacious. If she had signed a document of procuration, when Nympha was leaving him, then she could have brought him before the court. But she never did so. When, finally, Nympha not only deserted Evaristo, but also instituted a lawsuit against him, Evaristo did not make himself contumacious. Therefore, one cannot suspect a true consent given to the procurator, nor any retraction of consent. Therefore, if the true consent of both persisted, it must be concluded that there was no impediment preventing the marriage from being contracted by Nympha

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Spina, as she alleges in her appeal, so that the marriage contracted by her with Evaristo Branciforte is not null and void. We, on the contrary, believe that it was valid. But another argument remains to confirm our opinion and to expose Nympha's falsehood, which we will mention in the following chapter. Acts, Vol. XXVII, page CCCXX. 30.

[*Latin ed. p. 466*]

466 PALERMO. For the cohabitation and marital union of Nympha with Evaristus, whatever the reason, removes all difficulty. If, by hypothesis, we admit that the abduction was true, and although Nympha was in a safe and free place, she did not give her consent to entering into marriage with Evaristus; nevertheless, I do not consider the marriage invalid. Here, it is necessary to preface with the doctrine of the canonists, which is professed by Bonacina, Quaest. II, Punct. N, Disput. VI; Navarra, cap. 22, n. 51; Sánchez, L. 2, dec. 32, n. 9; Henriquez, L. 14, cap. 12, n. 2; and many others. If there was a lack of internal consent in the marriage contract on the part of one of the spouses, or if the consent, which was expressed in act by a procurator in place of and on behalf of the contracting party, was mentally retracted before the celebration of the marriage, it is sufficient that consent be given again, even mentally. But if the marriage was invalid due to the lack of consent of both celebrants due to fear or coercion, then some external sign must be manifested of mutual consent. But what will be such a sign? According to many canonists, Sánchez, Lib. 2, disp. 37, n. 9; Rodríguez, 1 p., cap. 22, n. 2; and others, it is sufficient that marital intercourse be had with marital affection. For no one knows the internal thoughts of the other. Each believes that the other has given consent and therefore considers the other to be his spouse, and is copulating with his spouse. This is sufficient to indirectly supply new consent. For eight years, Nympha and Evaristus lived together in the same house, and they consummated the marriage countless times. Is it possible! Was there not a single night in which they did not have marital intercourse? But Nympha loved Evaristus, and she had him as her husband, and Evaristus considered Nympha to be his legitimate wife, whom he pursued with love. This is testified by the Reverend Father Salvator Lanza Trabia, a witness received, who, with a touch to his chest, in a priestly manner, swore an oath. Therefore, concerning the state of the hearts of Nympha and Evaristus, it is to be believed that the priest, when questioned in his office, knows more than the one who is appealing, and his very few witnesses.

[*Latin ed. p. 467*]

PANORMITANA 467 Therefore, if they pursued each other with conjugal love, it must be said that they entered into a true marriage, or at least, having had marital relations, they tacitly renewed their consent, unless, which I do not believe happened, neither Nympha nor Evaristus, or both,

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did not give their consent. I therefore believe that the marriage is valid in every respect, and that the judgment of the Ordinary of Panormitana should be confirmed: "For it is more tolerable," as Beer, L. 2, title 20, on testaments, chapter 47, says, "to dismiss some who have been joined contrary to the laws of men, than to separate those who have been lawfully joined contrary to the laws of God." OPINION OF A CANONIST. Regarding the abduction, the Consultor said that it is difficult to establish, considering the proceedings of the court of Panormitana and the documents concerning the request for a dispensation from impediments. For if the parents of the bride were so concerned about the marriage that they did not act unjustly or unfairly in obtaining their goal, it is difficult to believe that they would expose the marriage to certain nullity by remaining silent about the abduction, unless the abduction was truly a simple flight. The bride herself, in her petition, denies the abduction, when it seems to serve her purpose, namely, to discredit the proceedings in Panormitana; for she says, in part, that nothing was discussed concerning the consent that should have been given, but only concerning the impediment of abduction, which in truth did not exist; while, on the other hand, she alleges the abduction when she argues that the dispensation obtained from the Holy See was invalid, because of deceit and trickery. But what is said, or can be said, about the abduction in this case, presents a considerable difficulty, due to the diverse opinions of canonists on this matter, so that it deserves a serious examination. And after briefly recounting the facts that accompanied the abduction or flight in this case, the Consultor proceeds to the aforementioned examination. The difficulty to which I have already alluded arises from the question among canonists: "Does an abduction, even if the girl is willing, but her parents are unwilling, invalidate the marriage?" Some Doctors distinguish between ignorant and unwilling parents, considering the parents to be ignorant but not unwilling, when the flight is preceded by discussions about...

[*Latin ed. p. 468*]

468 In PANORMITANA, concerning marriage, and when questioned, they give an affirmative answer, whenever such cases are presented. Sánchez, L. VII, disp. 13, n. 13, holds a contrary opinion: "because the decree of Trident holds the intention of favoring the freedom of marriage, and of preventing a reluctant woman from being forced into it. However, the will of the parents contributes nothing to this freedom, but only the will of the woman herself, who in this case is found to be complicit in the abduction." However, not any consent from the girl is sufficient, but only consent given in the context of the abduction, or with a view to marriage. And in this way, certain decisions of the Sacred Congregation are reconciled, which had led some doctors to hold a contrary opinion, such as those of January 24, 1668; March 3, 1741; Olmucen. Nullit. matr.

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July 29, August 26, 1769; March 14, 1772; Herbipol. Matrimonii, April 24, 1858; June 18 and August 27, 1859; Parisien. June 25, August 27, 1864. All of this can be explained by the quality of the consent given by the woman, and the necessity of proving it. Indeed, in order for a woman to be considered not to have been abducted violently, but to have consented, it is required that her consent be given both to the abduction and to the marriage. This consent must be fully proven, and as long as it is not proven, the woman is considered to have been abducted without such consent. Thus, if all acknowledge that the betrothal preceded the abduction, to which the girl had consented, then there is no impediment. For then there is proof of consent given with the intention of marriage in the context of the abduction. In all the cited cases, the question of the woman's consent was raised. In Olmucen., the secretary notes: "Furthermore, it should not be overlooked that it is not sufficient to exclude the abduction if the girl consents to it, unless it is also proven that she consented to the marriage with the abductor. It can happen that the girl consents to the abduction and dissents to the marriage; nor must consent to the abduction necessarily imply consent to the marriage." In Herbipol., a violent abduction was proven, and it was established that the woman was not in a safe and free place when the marriage was celebrated, nor during the five years she cohabited. The same is almost...

[*Latin ed. p. 469*]

In Panormitana, 469, a case arose concerning a woman in Paris, except that the girl was apparently lured away by deceit, and remained under the power of the man throughout the entire time until the moment she fled, after which she did not return to the man. Thus, it seems certain that in these matters, the consent of the woman alone must be considered, without any dissent from the parents or guardian. Such consent, however, is undoubtedly proven by previous betrothals, and indeed, completely. But what some authors assert, namely, that in the absence of valid betrothals, there is always considered to be a presumption of violence in the external forum, see Feyi, *De Imped.* p. 115, ed. I, seems to me to be excessive, because it does not necessarily remain within the bounds of the legislator, who is another and greater than simply protecting freedom in marriages. Indeed, consent to marriage can sometimes be proven without betrothals, unless we consider betrothals to be conversations held between the parties, in which, as is customary, marriage is indicated or presupposed. And given a voluntary flight, if there are nations where a laxity of moral sense would allow for the hypothesis of seduction or free love on the part of the woman, there are others whose moral sense and customs would completely exclude such a thing; in which case, therefore, consent to the flight would include a presumption of violence, and would include consent to marriage. In the present case, since the woman, long before the celebration of the marriage,

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was taken away from the power of the man, and was placed in a location where she was free, with regard to the man, the impediment has certainly ceased, in every case, and without doubt. But if another impediment existed between the parties, concerning which a dispensation was obtained, then a tacit abduction follows, and it is a matter of the utmost importance to determine whether the woman was truly abducted, or rather, whether she fled from her father's house together with Evaristo; for if the former is the case, the marriage must be declared invalid due to the impediment of consanguinity, which was not dispensed with; if the latter, then at least in this respect, the marriage will be valid. The legal deposition of the actress presents a completely dramatic history. Innocent, and utterly abhorrent to any affection for her uncle, she led a peaceful life in her parents' home.

[*Latin ed. p. 470*]

470 In Panormitana, a certain house was frequented by Evaristus, the mother's brother, a young man of most beautiful appearance, 23 years of age, until, after disagreements arose between him and his father, he was forbidden to enter the house any longer. From this arose a cruel plan, to avenge himself on his father by the abduction and defilement of his niece, which plan he indeed carried out. Besides the young woman herself, the following witnesses were presented: her mother, and Paulus Selvaggio, who heard the young woman exclaim, "Breast, breast!" The other three witnesses heard the matter from the mother, and indeed on the very same day, when they happened to or were called to the house at Spinae. However, the court of Panormitana seems to suspect the entire account; and not without reason, for, besides the fact that this abduction was a violent act committed against the unwilling girl around midday in a public street of the city, and that it could have been perpetrated by anyone of the many who, especially in southern cities, constantly wander about the streets, the Defender of the Bond presents a witness who offers testimony that is entirely different. This witness is Rmus P. Lanza Trabia, who, under oath, testified to many things that differ greatly from the accounts given by the daughter and mother, and which rather indicate a flight from home than an abduction. Furthermore, the witness Alia adds testimony that also raises suspicion: she stated that a woman and a man, after many years of marriage, while seeking support for their own needs, spoke of affection and love that they still felt for each other. Nor are there lacking other reasons to suspect bad faith on the part of the plaintiff. Firstly, in both documents, she remains silent about the illicit civil union that she had contracted with D. Palmieri, a union which, as far as one can gather, still continues. Furthermore, it appears, by chance, as from the testimony of a certain Trislo, a witness presented in the supplementary document concerning the death of the man, that this fact occurred. Moreover, the mother of Evaristus, Branciforte, who was summoned and expected twice by the Defender of the Bond, refused to appear. Why? It appears from

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the records that she has always loved her son; therefore, should one not consider that she would willingly offer testimony, if the things she could say about her son could serve to benefit him, now bound by an illicit bond? Another reason for suspicion is the expectation of death.

[*Latin ed. p. 471*]

PANORMITANA 471, to the relatives of the father, Nympha. It was impossible, while he was still living, to bring a complaint against the marriage, the speaker stated. Wherefore, I ask again? The daughter has already been abandoned by her wicked husband, perhaps even by another, civilly united; we have the date of the father's death, but not of the union with Palmieri. Would it not be to the greatest advantage of both parties, if it were possible, to contract a marriage before the Church? Was it not the case that, in order to consult about the honor of the Spina family, the father, as is asserted, procured the first marriage, by whatever means necessary? Is it not rather to be said that she awaited the death of her father, because he was presumed to be prepared to reject the fabricated story of abduction and consent, fraudulently obtained? If flight is admitted, all the circumstances, preceding, concurrent, and subsequent, perfectly agree; in the hypothesis of abduction, there are contradictions. Thus, for example, the seclusion in a retreat, the repeated sacramental confessions, first of Evarist and then of Nympha, the decree of separation, the penance imposed on both, the petition and dispensation for the impediment of consanguinity, all of which are entirely inconsistent with a supposed abduction, as well as the peaceful and affectionate cohabitation for several years after the marriage; what do these indicate? Certainly, a mutual fault. Not an injury inflicted by one upon the other. A mutual love persisting in the marriage. In the hypothesis of abduction, not only the abductor and the parents, but also the confessor and the ecclesiastical authorities of Panormitana would have been cruel to this unfortunate girl, not guilty of any crime, but a victim of another's crime. Truly, who would ever say such a thing? In the records, authentic copies of several public documents, signed by the spouses, are read, which demonstrate the flight. The speaker contends, as we shall see, that the subscription of her name to the instrument of procuration was fraudulently extorted by her father; she can be asked: Are these subscriptions, made for the same purpose, also fraudulent, since the marriage was already imminent? From all of this, it seems that only one conclusion can be drawn, namely, that the impediment of abduction is not at all proven in this case, indeed, it is not.

[*Latin ed. p. 472*]

472. It is also probable that [the case] pertains to Panormitana [Palermo], and therefore, with regard to this aspect, there should be no deviation from the opinion of the Panormitana court, which affirms the validity of the marriage between the parties. It does not seem improbable that the

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woman or her patron in this case suspected this conclusion, for she attacks the marriage on another ground, namely, on the basis of a lack of consent. Indeed, she asserts that she never gave true consent, that she was deceived by her father, and that she signed a certain document at his behest, because she believed it to pertain to some family matter. The testimony of her mother and Catherine Mazzola, who knew the woman in the institution, and furthermore, Jerome Bellavista, who accompanied the father on the day the instrument of procuration was signed, attest to this. We can dismiss the conversations held with Catherine, because it is not proven that the woman is incapable of lying, and her condition was such, being confined in a certain kind of workshop, that it would naturally lead a young woman to fabricate a story, by which she would protect her reputation and character. Furthermore, we dismiss suggestions from the parents and threats, if they or both were present. The circumstances favor them, and it cannot be denied that we must infer fear and violence, which, otherwise, are not alleged and are contradicted by subsequent events concerning the marriage, according to the testimony of D. Trabia. But the true difficulty arises from the instrument of procuration itself. For from this, it appears that the subscription was completed by all parties in the Candelora parlor, and that the woman affixed her hand in the presence of witnesses and parents, as is properly required. But she herself narrates the matter in a completely different way. She states that she signed the document not before witnesses, but only before her father, being deceived about its meaning and significance. The witness Bellavista was present, but he does not appear among the witnesses who signed, to whom the father, as they were returning home, said, "Whether you will or not, the matter is done now." Furthermore, we now have before us the declaration of D. Secretarius of the Roman Vicariate, which deserves all credibility, concerning the instrument of procuration.

[*Latin ed. p. 473*]

PANORMITANO 473, in the preserved archive, states that the names of the signatories were written with various and different inks. I confess that I cannot resolve the knot of this difficulty; not because hypotheses cannot be devised that might somehow explain the matter, for indeed two kinds of ink are not infrequently found in the same scriptorium; but such hypotheses do not satisfy the intellect, especially in matters of greater importance. It seems rather that the account of the actress should be considered confirmed in this regard; however, whether this should prevail against the opinion of the Panormitano court is left to the judgment of the most wise and reverend Lords. It seems to me that the opinion of the court should still be maintained, despite the difficulty arising from the signature, primarily because, even if a deception was obtained, the signature does not fully prove that no mandate was given by the procuration. Let us suppose that

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this instrument was legally drawn up by the father, while the daughter was still opposed to this marriage, if indeed Aversa was ever truly opposed; would this prevent her, later, after being persuaded by the arguments and persuasions of her parents, from giving her consent to the marriage, and therefore to the procuration? In Chapter last, concerning procurations, in 6, it is stated: "Indeed, if the procurator, before contracting, has been revoked by the Lord, the contract afterwards made by the same, even if he himself, or the one with whom he contracted, are completely unaware of such a revocation, has no importance, since the consent of the one making the contract is lacking, without which it could not have any validity." The same doctrine is found in Clement XI, De renuntiatione, from which it seems to follow that, since a change of mind in the mandating party invalidates a mandate duly made to the procurator, the same should also occur in the opposite case, so that a defective mandate, from the beginning, becomes true and effective through subsequent consent. Considering all of these things, it is clear that the petitioner's request is not sufficiently supported by any argument. The arguments alleged by her, where they are not contradictory, are not fully proven. The only witness presented, Trabia, is contrary in matters of the utmost importance; furthermore, he -

[*Latin ed. p. 474*]

474. The delay observed in the confession of the actress strongly suggests bad faith. The assertions made by her require full confirmation, and this confirmation is not present. Therefore, the consultant concluded: I believe that the judgment of the Panormitana court should be upheld, and the question should be answered: It is not established that there is nullity.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE OFFICE. The marriage contracted by Nympha Spina on October 16, 1864, with Evaristo Branciforti is so firm that those who, for many years, have stubbornly attempted to undermine it, are entirely provoked to indignation. For who can listen to her with a fair mind, when she declares the dispensation granted by the Apostolic See regarding the first and second degrees of consanguinity in the collateral line to be invalid due to abduction? It is clear that Nympha was not abducted WITH THE INTENTION OF MARRIAGE, which condition is necessarily required for the invalidation of such dispensations; but furthermore, it is clearly demonstrated that the abduction was entirely absent, and that Nympha, as well as Evaristo, are innocent of the crime of incest and flight. For example: on October 1, 1864, Nympha, just as Evaristo, swore and signed with her own hand that she had not had carnal intercourse in order to facilitate the dispensation for entering into marriage. A few days later, the same Nympha, together with Evaristo, signed a supplication, which contained a request for grave penance for the incest committed. Furthermore, Nympha objects that she signed the mandate to celebrate the marriage, being led to

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it by fraud and deceit: as if her father had advised her not about a marriage, but about a domestic matter; and to demonstrate that deceit was present, she brings forward the difference in the ink used by those who signed the mandate. No sane person can easily believe that a public notary was so forgetful of his office and his duty, as to favor the father of Nympha in a serious matter, such as...

[*Latin ed. p. 475*]

PANORMITANO writes and states that another document was read in the presence of those interested and seven witnesses. He denies that there was any difference in the ink. Indeed, there were, at least, two inkwells present, because Nympha resided within the enclosure. Furthermore, if the same pen is first dipped in one inkwell and then in another, it does not immediately produce a different color, but rather gradually releases the ink. From this, it follows that the asserted difference in color in the subscriptions is not conclusive. However, it is entirely necessary to hear the testimony of Salvator Lanza Trabia, a priest distinguished by his religion and piety, who testifies under oath that, for various years since the marriage began, Nympha and Evaristus spoke of mutual affection, each pursuing the other. From this testimony, not only does the *fabella* of a forced marriage emerge, but also the ratification of the marriage, even if, by the most absurd hypothesis, a true and free consent were lacking on one side during the actual celebration. The matter concerns a marriage, which has value publicly and legally. Therefore, if any defect occurred, it is removed by the presentation of consent, even if it is concealed. Finally, in the records, there is the most eloquent testimony of Joanna Branciforti, mother of Evaristus, and Lamberta Branciforti, sister of Evaristus, who, having been summoned to court according to the law, vehemently resisted. If anything of what Nympha alleges against the marriage were true, there could be no women more cruel than those who, while they could, both temporarily and eternally, benefit Evaristus, who is bound to another woman by civil bonds, refuse to give testimony. The matter is, in the most evident case, entirely clear. Therefore, I humbly request that the following question, "Whether the judgment of the court of Panormitano of the 8th of the month of 1882 should be confirmed or overturned in this case," be rewritten as: "THE JUDGMENT SHOULD BE CONFIRMED AND FURTHER AFFIRMED." With these observations, the matter is to be settled.

[*Latin ed. p. 476*]

476 PALERMO. Whether the judgment of the Tribunal of Palermo of July 8, 1882, should be confirmed or rejected in this case. RESOLUTION. The Sacred Congregation, after deliberation on September 1, 1894, decided to respond: affirmatively to the first part, negatively to the second. FROM WHICH THESE CONCLUSIONS ARE DERIVED: I. Abduction is the vio-

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lent taking away of a woman from a safe place to a place where she is placed under the power of the abductor, for the purpose of entering into marriage. II. Concerning this, even if an abduction occurs, and is consummated, no impediment to marriage arises, if it is done to satisfy lust, and not truly to enter into marriage. III. The judgment of the Tribunal, which was validly established, was rightly confirmed in this case, both because the abduction was not proven, and because, even if it did occur, it was not directed towards entering into marriage, but towards inflicting an injury upon the woman's father. NOLA. ANNUAL OBLIGATION. On September 1, 1894. Session 25, chapter 3, concerning reforms. SUMMARY OF THE FACTS. In the Diocese of Nola, it is customary that, on April 25th, on the feast of Saint Mark, the entire clergy gives a sign of obedience to their Bishop, standing before him in the Cathedral Church. In the Synods of the more distant and closer dioceses, this custom is maintained, with permission granted by custom, to change this obligation into a payment of two tari, amounting to 85 percent of our money, under the penalty of censures against those who violate the law. Until the year 1892, the clergy of Turris Annunciatae fulfilled their obligation under this agreement, but in the following year, on April 25th...

[*Latin ed. p. 477*]

In Nola, the year 477 decreed that obedience should be demonstrated through a representative. The Bishop, moved by the novelty of the matter, fearing that the rights of the episcopacy would be undermined, warned the clergy that he could not, according to his conscience, allow the old custom to be disregarded, and that nothing should be changed until the Sacred Congregation provided a response regarding the right to establish or not establish a representative, in order to demonstrate obedience. Because in the Diocese of Nola, the Bishop and the clergy walk together in exemplary harmony, with unanimous counsel and peaceful intent, they presented the matter to the Sacred Congregation for a juridical solution to the doubt. To better determine the terms of the question, the Bishop inquired about the nature of this obligation, especially whether it concerned the Cathedral chapter; the Ordinary replied: in this diocese, the cathedral chapter is not to be reimbursed; perhaps a small offering from the chapel of Saint Mark could provide for it.

A Synopsis of the Discussion: While the Bishop entirely submits to the prudence and judgment of the Sacred Congregation, the clergy of the Church of the Annunciation, with equal minds, offered the following observations to better explain the matter. These priests note that, in the past, rather than going to the Cathedral, which is very distant from their town, they have always paid "two tari." Only after the year 1875, due to convenient and open roads, is access to the city of Nola easy, so that if one or two representatives are sent, the expenses of the journey, divided among

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the priests individually, do not equal "two tari." For this reason, which has never before been the case, it is now being put into effect. Furthermore, they note that, with regard to the synodal regulations, as related in the circular letter, the custom tempered their force by establishing an alternative obligation: either to attend the Cathedral or to pay "two tari," and thus also softened the penalty of censures. Moreover, they point out that the obligation to attend the Cathedral implicitly contains the possibility of fulfilling this obligation either by oneself or by another, according to the legal provision of law 72, section 6. He who acts through another is considered to be acting himself.

[*Latin ed. p. 478*]

478 In Nola, this faculty is not understood to be removed unless expressly derogated from. Indeed, in this case, this substitution seems necessary, especially on the solemn day of Saint Mark, on which processions must be held in the parochial churches, so that the clergy of Turate Annunciata would not be able to fulfill this rule of common law. Moreover, the alternative would seem almost ridiculous, since one must contribute 5 *libellae*; and one residing elsewhere fulfills the obligation by paying 85 hundredths of a *libella*. Finally, the priests of Turate Annunciata note that the alternative part of the obligation is not without difficulty, because this contribution of "two tari" represents the *cathedraticum*, which those who are not beneficed are not required to pay; therefore, a doubt arises as to whether those who are not beneficed are obliged to demonstrate their obedience by either attending the Cathedral Church, or by paying the "two tari." Furthermore, it has been observed that this contribution is a vestige of the *cathedraticum*, as clearly taught by its very nature, according to Reiffenstuel in Title: On *Censibus*, Ecclesiastical Revenues, etc., no. 10, where, in response to the question: "What is the *cathedraticum*...?", he answers: "The *cathedraticum* is, by law, two solidi to be paid annually to the Bishop from the church, as a sign of submission, and also in recognition and honor of the Cathedral Church." Barbosa, *De Officio et potestate Episcopi*, alleges, no. 86, no. 40. Fagnanus, in *c. Conquerente*, 16, *De Officio Ordinis*, where it is said: "Two solidi are due by the name of the *cathedraticum*," and in the decree, *Placuit can. 10, q. 3*, it is stated: "It was decided that no Bishop shall collect anything from the churches, except for the honor of his Cathedral, that is, two solidi," etc. How this measure of two solidi is to be applied relatively, according to the customs of the regions, is learnedly explained by Benedict XIV in *Oper. De Synodo dioec.*, book 6, chapter 5. Because in many places, the payment of the *cathedraticum* began to resemble a fiscal tax, it often happened that it fell into disuse, or was changed to other forms of reverence. Especially because, by the institution for the ordering of the clergy, concerning the

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sacred patrimony, established by the Council of Trent,

[*Latin ed. p. 479*]

NOLA, 479: It is decreed that clerics who are instituted to a benefice, but are not yet in possession thereof, are not obligated to pay the *Cathedraticum*, which is naturally drawn from the goods of the church. Therefore, in order that newly ordained clerics might not appear to be exempt from their obedience and reverence due to the Cathedral Church, they are obligated to perform other acts of obedience, which are ultimately seen to be more suitable for demonstrating obedience than the payment of money, especially during the 15th and 16th centuries when the Church was overflowing with wealth. Thus, the matter being brought to this point, it appears that nothing prevents the entire clergy, through a procurator or delegated person, from publicly declaring their obedience and submission to the Bishop on a designated day, as the Doctors commonly teach in the *Tractatus De Maioritate et Obedientia*, noting that obedience and submission must be solemnly and externally demonstrated to the prelates; but how this is to be accomplished in each individual case is not determined by common law. Because transgressors of this Synodal law are subject to severe penalties, the clergy of the Tower of the Annunciation also inquire whether such penalties can be imposed, since they seem to be quite severe. Regarding this matter, it should be noted that the obligation to pay the *Cathedraticum* is a serious one, due to the significance attached to it; hence, Benedict XIV, in *Opera De Synodo, dioecesis, lib. o, cap. 4, no. 5*, praises Saint Charles Borromeo, who, in the second Synod, renewed the law concerning the *Cathedraticum*, and also the prelates of the Council of Bourges, in Title 33, canon 7, ordered: "Synodal rights, the *Cathedraticum*, episcopal rights, and all others must be fully paid, under pain of excommunication." However, Benedict XIV, in the aforementioned work, *lib. 10, cap. 1*, illustrates with numerous authorities the very serious words of the Council of Trent, in Session 25, chapter 3, concerning the use of censures: "Although the sword of excommunication is the nerve of ecclesiastical discipline and is very salutary for restraining those in office, it must nevertheless be wielded with moderation and great circumspection; for experience teaches that if it is rashly or lightly applied, it is more likely to be scorned than feared, and to cause harm rather than salvation." And afterwards, the same author...

[*Latin ed. p. 480*]

480 In Nola, the most prudent Prelate observed that censures, especially those of a severe nature, ought to be imposed with great moderation; whereas, when the censures to be imposed are of lesser gravity, it is always necessary that a warning of the same censure be given beforehand. On this matter, it is for Your Eminences and Reverend Fathers to deliberate

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whether, in the case of a Cathedral Canon or another of similar standing, the gravity of the offense warrants the imposition of a severe censure, at least in the case of a major excommunication. With these considerations in mind, it was left to the Eminences and Reverend Fathers to deliberate what response should be given to the following queries: I. Whether all and each, even those not holding benefices, are bound to attend the Cathedral Church, or to pay a certain sum in such a case. II. Whether the act of attending the Cathedral Church can be performed by a proxy in such a case. III. Whether, on the contrary, those who transgress are subject to major penalties in Synods, in such a case. RESOLUTION. After deliberation by the Sacred Congregation on the 1st of September, 1894, it was decided to respond as follows: To I, affirmatively; to II, negatively; to III, affirmatively. POSTULATE OF S. GALLI, 1st of September, 1894, CONCERNING THE ACCEPTANCE OF OFFERINGS FROM MISSES. A summary of prayers, COMPENDIUM FACTI. In the report of the Church of S. Galli presented to the Sacred Congregation on the 15th of March, 1893, the following is stated: "In many churches, the number of anniversaries is so great that from these many, those assigned to the church cannot be paid for. Sometimes, as many as 350, 400, and more are assigned to a single priest."

[*Latin ed. p. 481*]

St. Gall, 481: "For this reason, I have permitted you to establish new perpetual endowments for such churches and benefices, but only under certain conditions, allowing them to be temporary, for example, for 25 years. However, the execution of this decree is not without difficulty. Many insist with prayers that they may receive new endowments without impediment, and that they may take care of the old ones in other churches, which I have not permitted, except, perhaps, when a church that is very poor has been offered a sum double the amount of the endowment. Furthermore, because of the importunity of those who request it, I ask whether one should adhere to the rule stated above concerning new endowments, or whether it is permissible to accept new endowments where the number of endowments already established significantly exceeds what is appropriate. Indeed, these endowments are consulted for the sake of the poverty of many churches, and many faithful greatly desire to offer this piety for their deceased relatives."

Synopsis of the Discussion: It appears that the Bishop did not consider the matter to be of great importance, since it has its solution in the most wise Decrees of Urban VIII and Innocent XII concerning the celebration of Masses, promulgated by the Sacred Congregation of the Council. For it is read in § VIII: "Furthermore, the Sacred Congregation strictly prohibits all chapters, colleges, societies, and congregations, as well as all and each superiors of secular and regular churches and pious places, and others to

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whom it pertains, from henceforth accepting perpetual obligations for the celebration of Masses: secular ones indeed without the permission of the Bishop or his General Vicar, and regular ones without the written consent and free grant of the General or Provincial, otherwise, the secular person who has transgressed this prohibition shall be forbidden from entering the Church, etc."

§ IX: "However, they may receive manual and daily alms for the celebration of Masses only if they have satisfied the obligations previously imposed, so that they may also be able to accept new obligations; otherwise, they must abstain entirely from such alms, even those offered spontaneously, in the future. NEW OBLIGATIONS CANNOT BE ACCEPTED." *Acta, Vol. XXVII, page 31.*

[*Latin ed. p. 482*]

482. Sancti Galli decrevit: "Ut capsae, cum inscriptione 'Eleemosyna pro Missis' vel alii similes, ab Ecclesiis auferantur, sub poenis, quae ipso facto incurrantur, ut fideles hac ratione non frustrentur." § X. "Verum Episcopus, seu eius Vicarius, aut Generalis, vel Provincialis, ubi de licentia pro perpetuis oneribus requisiti fuerint, in singulis casibus diligenter inquirant de singulis Missarum celebrandarum obligationibus, quae cuique Ecclesiae, monasterio aut loco pio incumbent; nec antea assensum huiusmodi aut licentiam praebeant, quam eis legitime constiterit illius Sacerdotes tam novo oneri suscipiendo, quam antiquis iam susceptis satisfacere posse, praecipuamque rationem habeant, ut reditus qui ecclesiis et locis piis relinquuntur omnino respondeant oneribus, secundum morem cuiusque civitatis vel provinciae; infelligantque, si in re tanti momenti desides aut negligentes fuerint, in novissimo die se huius praetermissi muneris rationem esse redituros." Exinde ex positivo iure, ea responsio videtur Episcopo reddenda, nempe ut sedulo curet exscripta decreta servare, nullimode permittentia, in certa Ecclesia, acceptari onera Missarum quae in eodem congruo tempore adimpletioni, iuxta fidelium voluntatem, demandari non valeant, quacumque transactione in re tam gravi posthabita. Verum ex adverso, nulli est parcendum industriae, ut salvo iure communi et tantae obligationis decore et sanctitate, eae assumantur provisiones, quibus ecclesiarum necessitatibus satisfiat et fidelium piae voluntati. In ea enim incidimus tempora quae, nimis Ecclesiae Christi inimica, difficulter sinunt, aliquam Ecclesiam adhuc abundare fidelium oblationibus et eleemosynis, et timere iubent, ne quam citius Ecclesiae divites ad extremam redigantur paupertatem. Proinde eo spectare debet, hisce in locis, Ordinariorum sollicitudo, ut fidelium piis voluntatibus acceptis, sive actu inter vivos, sive mortis causa expressis, tutiore via fieri possit ratione, huiusmodi pia legata executioni demandentur, distribuendo, non sine oblatorum assensu tacito aut expresso, suscepta Missarum onera inter eas Ecclesias, ONERA NOVA

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EXCIPI POSSUNT.

[*Latin ed. p. 483*]

St. Gall, 483, which conveniently fulfill the same purpose. How a Bishop can appropriately inquire about the proper fulfillment of certain obligations seems to be taught in chapter seven of the Instructions of the Sacred Congregation of the Council concerning the Visitation of Holy Places, in which it is prescribed to the Bishops to inquire "Whether in the sacristies of all and each churches, a table of the obligations of Masses and anniversaries, according to the decrees of the Most Holy Urban VIII, is displayed, and whether these obligations are punctually fulfilled." Concerning this table of the obligations of Masses and other books to be kept in the sacristies for the faithful fulfillment of the obligations, Benedict XIV, in his work *De Synodis Dioecesibus*, Book 13, chapter last, number 4, writes as follows: "Here it will be sufficient to point out, in the aforementioned Constitution of Innocent XII, beginning with 'Recently by the Congregation,' that in each secular and regular church, there should be a catalog or table of the obligations which have been imposed upon it, either perpetually or for a definite period, and which have been respectively accepted; and also that in the sacristy, two books should be kept, in one of which perpetual and temporary obligations of this kind are recorded; and in the other, manual and votive Masses are inscribed, along with a faithful and distinct notation of the fulfillment of both. " Later, the same author, after mentioning the precautions to be taken in preparing and overseeing such books, which were instituted by St. Charles Borromeo and Clement X, concludes: "Therefore, the sum of these precautions is that a distinct index or table should be prepared, clearly indicating the perpetual and temporary obligations of Masses, along with an indication of the will or other legal act drawn up by a pious testator, and the designation of the place, namely, the church in which the sacred rites are to be performed, as well as the number of Masses and the time at which they should be celebrated. With the protection of this index or table alone, if it has been prepared in a proper manner and with accurate indications of the records, it will be easily and safely possible to determine whether the obligations have been fulfilled in good faith; which cannot be certainly ascertained from the books alone, as it is possible to demonstrate, according to Decision 372, Part III, that the Mass was celebrated according to the prescribed order, or that the offering of the sacrifice was applied, if a priest offered it and noted it, and also that it was applied."

[*Latin ed. p. 484*]

484 Saint Gall's regulations, according to the instruction of the Most Holy Congregation, printed in *Monacellum*, volume III, page 217, number 14, but from these it does not follow that all those sacrifices which ought to

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be celebrated and applied have been celebrated and applied, so that the dispositions of the pious founders are fully satisfied. Besides books, therefore, a table is also necessary, which must be compared with them; but this table cannot have any validity, unless it agrees with the public document in which the pious founder has expressed his will." These salutary dispositions seemed worthy of consideration so that the conclusion might be reached that the Ordinary can regulate and distribute, with due regard for the will of the pious founders and those who offer, both perpetual and temporary Masses, and also votive Masses, so that each of these obligations may be accepted, and distributed with prudent judgment, and recorded in a suitable table for each church, and their fulfillment diligently supervised and enforced, through faithful execution, in a special index or book kept for this purpose, along with the other tables of obligations, and kept in the sacristies. With these things noted, the question was asked as to what should be answered. RESOLUTION. After deliberation, the Sacred Congregation, on September 1, 1894, decided to respond: Regarding the faculty of accepting new endowments for a period of ten years; and to the extent that neither older nor more recent endowments can be fulfilled in the church to which they are offered, they may be transferred to other churches, within the same diocese; except in the case in which the donor expressly designates a church or altar for a special purpose of the church, or out of a special devotion. GALLIPOLI JUBILEE. On August 11, 1894. Through summary prayers. SUMMARY OF THE CASE. Aloysius Calori, from the city of Gallipoli, having served in the choir of the cathedral church of that city since December 30, 1850, considered that...

[*Latin ed. p. 485*]

GALLIPOLITANA 485, having fulfilled his service, in the year 1891, requested from the Sacred Congregation of Clerics a dispensation from his duties; he was also burdened by a grave age of sixty-six years, and by a most unfavorable state of health, which was confirmed by the testimony of several physicians. When the Bishop was consulted regarding the prayers, he reported: "The Chapter was reluctant to grant permission for the dispensation from duties, both because the health of the petitioner did not appear to be so deteriorated, and because a distinction would arise for the choir from this concession." After this, the petitioner's prayers were dismissed on June 13, 1891, with a decree stating: "Having presented a sworn medical certificate, for the purpose of obtaining a dispensation for the days and hours during which the petitioner, due to his infirm health, cannot attend the choir, and burdened by his conscience: the distributions among the present members will be withheld for two years, at the discretion and judgment of the Bishop." The Primicerius, Aloysius Calori, reluctantly accepted the response of the Sacred Order, and reiterated his prayers to the same end. Although he attempted to respond to some of the objections raised by the

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Chapter and the Bishop, which they had repeatedly mentioned, another decree was issued a year later, on September 14th, not to grant the dispensation, but to extend the previous dispensation for another two years, under the same conditions. The petitioner, believing that the Chapter had treated him unjustly and harshly, again requested that he be granted a dispensation from his duties, noting: "Such a dispensation would not harm the service of the choir, because the Chapter still numbers 19 praebendarii in addition to 12 chaplains." Furthermore, the petitioner stated that he perceived partiality in the Chapter's decision, because it had not opposed the petitions of two other choir members who subsequently requested and obtained a dispensation from their duties. It was then deemed appropriate to write to the Bishop, requesting that he explain what obstacle prevented the granting of a dispensation from duties to the canon, Aloysius Calori, when two other choir members, after him, had requested and obtained such a dispensation with the consent of the Chapter, and without any alleged detriment to the worship. In obedience to this command, the Bishop of Gallipoli...

[*Latin ed. p. 486*]

486. The Gallipoli chapter sent its summary resolution to the Sacred Congregation of the Council; in it, the chapter sought to justify its actions by stating that one of the two canons had reached the age of 80, while the other was so afflicted by a nervous condition that he could scarcely speak; on the other hand, the canon assigned to the choir was far from the aforementioned inconveniences of the canons. However, the aforementioned canon persisted in his petition, stating that the dispensation of exemption granted to him by the Holy See was being rendered futile by the zeal and harshness of the chapter towards himself. When the chapter realized that the matter would be presented to the full assembly, it somewhat receded from its previous position, declaring that the Apostolic See would decide whatever was to be decided in this matter concerning the exceptions.

SYNOPTIC DISCUSSION: JUBILEE, INDULGENCE. This is not a new discipline in the Church, by which canons and other individuals dedicated to the sacred ministry are granted a leave of absence, without losing anything of the fruits of their benefices, if it has been legitimately proven that they have served continuously and commendably for 40 years. This was established both to prevent the soldiers of Christ from becoming in a worse condition than secular soldiers, to whom, after their service, a rest has been granted, as is stated in canon 9 of the Code concerning Provinces, and in canon 6 concerning dispensations and excuses; and also to make ecclesiastics more zealous and diligent in performing their sacred duties. Fagnan, in cap. *Licet de praeb.*, n. 116. There seems to be no doubt that the canon, Calori, has rendered commendable service, after what the Ordinary, although offended by the grant of the jubilee, wrote to the Sacred

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Congregation: it is true that the canon has completed his forty years of service in the choir, commendably and without interruption; nor should the opposition of the chapter be given too much weight, since the Sacred Congregation does not inquire about the chapter's consent in order to grant the grace, but orders them to be heard solely for the purpose of ascertaining that there has been a certain and commendable continuous service for 40 years, and to discover the reasons, if any, that might hinder the granting of the grace, despite the prayers offered. Indeed, it is clear to everyone that...

[*Latin ed. p. 487*]

GALLIPOLITANA 487, contra votum Capituli, si hoc dissensum ex causa iniusta constiterit, Sacra Congregatio [S. C.] iubeat concessum, licet plures etiam essent qui eandem gratiam postulari possent, ut apparet in Civitatis Plebis, actis 23 Novembris 1782; in Civitatis Castelli, actis 15 Iulii 1820; et in Sutrina, 21 Februarii 1824, inter supplicationes relatas, in quibus Sacra Congregatio concessit, nonobstante dissensu, tum Episcopi, tum Capituli, quod tantum tres canonici reliqui essent qui choro inserviebant. Nec eius petitioni, orator censet, obicitur detrimentum servitio chori, cum in praefata Ecclesia alii numerosi canonici, puto 19, ut ex numero votorum colligi potest, et 12 cappellani adsint, et Episcopus, in casu urgentis necessitatis, revocare etiam iubilatos possit, ut Sacra Congregatio respondit in Civitatis Castelli, actis 15 Iulii 1820.

IUBILATIO DENEGANDA VIDETUR. Ex altera parte, perpendendum est Sacra Congregatio die 17 Aprilis 1666 iubeationem denegavisse cuidam canonico Cathedralis Ecclesiae Civitatis Castelli, qui per annos 40 inservierat, quia a Capitulo opponetur, quod vigore Constitutionum Capitularium nullus, nisi infirmus, vel iusta de causa absens a servitio chori, eximere poterat, et quia divinus cultus minuebatur, etsi in praefata Ecclesia adessent Praepositus, duodecim canonici et duo beneficiati, qui sacris peragendis functionibus pares non censebantur, liber decretorum, 25, pagina 107.

Tota igitur quaestio ex hoc pendere videtur, utrum, concessa iubeatione canonico oratori, qui supersunt canonici sufficiant ad sacras functiones debito cum decore et absque divini cultus detrimento peragendas. Omnes vero sciunt quanti momenti sit Episcopi iudicium, utpote qui optime noscere praesumitur Ecclesiae sibi concreditae statum et necessitates.

Quibus animadversis, quaesitum fuit quid esset precibus respondendum.

RESOLUTIO. Sacra Congregatio, post disceptationem sub die 11 Augusti 1894, censuit respondere: Pro gratia iubeationis cum solitis clausulis.

[*Latin ed. p. 488*]

488 FROM THE SACRED CONGREGATION OF RITES AT AURELIAN.

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Synopsis of the life of the Venerable Servant of God, Joan of Arc, for the purpose of beatification and canonization. James of Arc and Isabel, born in Rome, begot the Servant of God, Joan of Arc, on the 6th of February, in the year 1412, in the village of Domremy, in Lorraine. She received baptism in the church of Saint Remigius in this village, as many witnesses testified in the Apostolic Process, and in the year 1455, at the command of the Supreme Pontiff Callistus III, the faith was confirmed in the same village. From this Process, the piety of her parents is evident, as it is said: "They were good and faithful Catholics, good workers, and of good reputation." They themselves instructed their daughter well in the Catholic religion, and her mother instilled in her, with particular care, good morals. Hence, eyewitnesses declared concerning her early youth: "She was a good and simple daughter, fearing God, sufficiently instructed in the faith, of good, simple, and sweet conversation." While she resided in her father's house, she assisted the farmers with her own hands: "In her father's house, she spun hemp and wool, and sometimes went with her father to the plow, and she tended the animals in turns." Not only did the maiden faithfully fulfill her duties towards her parents, but also those of religion and piety. For her heart burned so with devotion that she aroused the admiration of all; and the parish priest of the village declared: "That she was the best he had ever seen, and that he had no one like her in his parish." She frequently received the Divine Sacraments; she observed the prescribed fasts; she constantly frequented the church; she attended Mass daily, and she poured forth fervent prayers before the images of the Crucifix and the Most Blessed Virgin. On feast days, while other girls relaxed and indulged in dances, she went to church and carried candles, which she offered to the Most Blessed Virgin; and on the Sabbath day, out of devotion to Her, she made a pilgrimage to a solitary place, namely, to the church of the Blessed Virgin of Bermont. So great was the love she bore for God and the worship due to Him, that even in the evening, even when she was in the fields, as soon as she heard the church bell, she knelt down.

[*Latin ed. p. 489*]

According to the mind of the Sacred Canons 489, she would raise her mind to God. And having been a devoted witness to the Church, she recounted, "I have often seen the aforementioned Joan come to the church for Mass and Vespers, and while this witness did not ring the Vespers, Joan would reproach this witness, saying that it was not done well, and Joan then promised this witness wool, so that he would be diligent in ringing the Vespers." Furthermore, other witnesses testified to her charity and faith, even towards her neighbors. She comforted the sick and "freely gave alms, provided hospitality to the poor, and wished to cast herself into the fire, and that the poor might sleep in her bed." Such virtues, in a girl of about twelve years of age, are so remarkable that they certainly indicate

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an extraordinary divine grace. And already, God had begun to reveal His plans to Joan, through certain heavenly visions and revelations, as we know He has done with other holy virgins. Indeed, when she was thirteen years old, in the garden of her father, she heard a voice from the side of the church, and saw a great light. Then she was struck with fear, but when she heard the voice again, she knew it was the voice of an angel, as she herself confessed: "She confessed that when she was thirteen years old, she heard a voice from God, urging her to govern. At first, she was a young girl and was afraid; but after hearing that voice three times, she knew that it was the voice of an angel." In these first appearances, the angel had not yet revealed Joan's divine mission, but "only taught her to govern herself well, and to frequent the church." And she vowed her virginity to God. Later, the Archangel Michael revealed himself to her, and commanded her to leave her father's house and go to the King, to help him; and not to be afraid, because Saint Catherine and Saint Margaret would help her. The humble girl said: "that she was a poor daughter who did not know how to ride a horse or lead an army." But her faith and obedience were so great that, having left her country and her parents, she went to the village of Burey-le-Petit, to her uncle, Durand Laxarcl. Joan then asked him to take her to Vaucouleurs, to the Lord Robert de Baudricourt, "who was then Captain of the said town of Vaucouleurs, because she wished to go to France, for the sake of God."

[*Latin ed. p. 490*]

490 FROM St. C. RITUAL: "a phial for making him be crowned." The uncle is astonished, but she says: "Has it not been said that France would be destroyed by a woman, and afterwards it must be restored by a virgin?" The uncle nods, and on May 13, 1428, he took her to Vallis-Oolorem, so that she might speak with the Duke of Baudricourt. But the Duke did not believe the girl's words; indeed, he said to her uncle: "that he should take her back to the place of her father and give her alms." However, the girl did not lose heart, and upon returning to her father's house, she again devoted herself to her labors, firmly trusting that she would soon be presented to the King. Indeed, not long afterwards, as God willed it, the aforementioned uncle went to the town of Domremy and obtained the girl from her parents, under the pretext of helping his wife. Then the uncle went again to Vallis-Colorem and entrusted the girl to the pious family of Le Royer. Catherine Le Royer, examined in the process, testified: "that when Joan was brought to their house by Durand Laxart... she saw that she was a good, simple, sweet girl, and well-behaved; she went willingly to church and willingly confessed, and she saw her confess to the Lord John Furnerii, the curate of the aforementioned village of Vallis-Colorem." Meanwhile, Joan openly manifested her mission, saying: "that she must go to the noble Dolphin, because her Lord, the King of Heaven, willed it, and that if she must go

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above her knees, she would go." A certain knight, John de Novelompont, who was closely connected with the family of Le Royer, questioned the girl, as he himself testified: "My friend, what are you doing here? Must the King be expelled from the kingdom, and must we be English?" To this, the girl replied: "I have come here to speak to the King, to Robert de Baudricourt, so that he may wish to take me or have me taken to the King; but he does not care for me nor for my words; nevertheless, before the middle of Lent, it must be that I go to the King, if I must lose my feet up to my knees. For no one in the world, neither kings, nor dukes, nor the daughter of the King of Scotiae, nor others, can recover the kingdom of France, except through me, although I would prefer to remain with my poor mother, because that is not my place; but it is necessary that I go, and I will do so, because my Lord wills that I do so."

[*Latin ed. p. 491*]

From the Sacred Rites, 491: Robert, the Duke of Baudricourt, in order to test Joan's spirit, had her swear to the parish priest, saying that if the matter were bad, she should leave them, and if it were good, she should remain with them. Joan approached the priest and knelt before him. Regarding this oath, Joan later rightly complained to her friend, Catherine Le Royer, because the priest had heard her confession. Robert of Baudricourt was perhaps still doubtful, but he had to yield to the eagerness of the citizens. Joan, however, had implored forgiveness from her parents, telling them that she had been compelled to obey the divine will: "God commanded it, and even if I had a hundred fathers and a hundred mothers, and if I were the daughter of a king, I would have gone." Hence, on the first Sunday of Lent, that is, on February 13th of the year 1429, having put on men's clothing and mounted a horse, together with several soldiers, to whom the Duke of Baudricourt entrusted Joan, and with a safe-conduct from the Duke of Lorraine, she set out on her journey towards the King. This difficult journey, which lasted eleven days, filled with fear of the English and Burgundians, was certainly remarkable. It is worth noting that one of the companions on the journey, namely, Jean de Novelompont, testified that Joan's faith in God and her piety were evident. "He himself, and Bertrand de Poulengeyo, with his two servants, and Colet de Vienne, a messenger of the King, and a certain Richard, an archer, led the maiden to the King, who was standing in Chinon. Leaving the aforementioned village of Valliscolore, because the road was surrounded by English and Burgundians, they traveled towards the King, sometimes at night, and they remained on the road for a space of eleven days, riding until they reached the aforementioned village of Chinon; and while traveling with her, the aforementioned witness asked her if she was doing what she said she would do; and the maiden always told them that they should not be afraid, and that she had been commanded to do this, because her brothers in paradise and her Lord, namely, God, had

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told her that it was necessary for her to go to war to recover the kingdom of France. Furthermore, during the journey, she willingly heard Mass, as she said, because she told them: 'If we can hear Mass, we will do well,' but because of the recognition of her, they did not hear Mass on the journey except twice. Moreover, the aforementioned witness said that..."

[*Latin ed. p. 492*]

492. The young girl greatly believed in the Sacred Rituals, and she was, as she believed, inflamed by the same divine love. And she believed that she had been sent by God. She said again that, as long as she was with him, she had found her to be good, simple, devout, a good Christian, well-mannered, and fearing God. And this was fully confirmed by the other companions of the journey. Having arrived in the city of Chinon, before the King, the Handmaid of God had to endure other obstacles. For some of the King's advisors said that no credence should be given to her. However, after a few days, when the King had been further informed by Robert of Baudricourt that Joan had miraculously crossed many rivers before the enemy to bring him aid, she was granted an audience. The King, as eyewitnesses have testified, "drew her aside from the others, but Joan recognized him well, and she showed him reverence." Then she spoke to the King: "Noble Dauphin, I am Joan the Maid, and I come to you from the King of Heaven, who commands you to be consecrated and crowned in the city of Rheims, and you shall be the lieutenant of the King of Heaven, who is the King of France." After many questions that the King asked her, Joan answered: "I tell you, by the grace of God, that you are the true heir of France and the son of the King; and I am sent to you to lead you to Rheims, so that you may receive there your coronation and consecration, if you will." Having heard these things, the King, in the presence of Joan, said that she had also revealed to him certain secrets "which no one knew or could know except God; therefore, he had great confidence in her." However, the King, still unwilling to do anything until he had consulted with ecclesiastical men, sent Joan to Poitiers so that she might be examined by the Doctors of the University. After three weeks, the Doctors reported to the King that they had found nothing in Joan contrary to the Catholic faith: "In her, one finds no evil, but only good, humility, virginity, devotion, honesty, and simplicity." One of the Doctors, Father Seguin, Professor of Sacred Theology, asked her for a sign, to which the young girl replied: "I have not come to Poitiers to perform signs, but lead me to Orleans, and I will show you signs of those things for which I have been sent." From this, all the Doctors concluded: "that, given the urgent necessity and the danger in which the city of Orleans was,

[*Latin ed. p. 493*]

FROM THE SACRED CANONS, 493: "The King could help her in this

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matter and send her to Aurelianis." The King readily followed this advice. The King also desired that the maiden have people devoted to her, and the almoner, who was Father John Pasquerel of the Order of the Hermit Brothers of Saint Augustine, always followed her. A horse and arms were given to her; but she preferred an old sword adorned with five crosses, which she indicated could be found in the church of Saint Catherine of Fierbois, as was indeed discovered; and she desired a banner with the image of the Redeemer, which she always carried with her. When asked why she carried the banner, she replied: "Because I do not wish to use my sword, nor do I wish to kill anyone." Around the end of April of that year, 1429, she went to the city of Blesensem, where an army of nearly twelve thousand soldiers had been gathered, which had prepared supplies for the city of Aurelianis, besieged by the English. Her first concern was to maintain good morals in the army; therefore, she expelled women of bad character and severely rebuked blasphemers. Furthermore, she desired another banner with the image of Christ, to gather the priests, which her almoner, the Reverend Father Pasquerel, made, whose testimony it is fitting to hear: "When this banner was made, Joan every day, both in the morning and in the evening, would gather all the priests through it; and when they were gathered, they would sing antiphons and hymns of the Blessed Mary, and Joan was with them; and she did not wish to allow any of the priests to be armed, unless they had confessed that day, warning all those who were armed to confess, so that they might come to such a gathering; for in that gathering, all the priests were ready to hear the confessions of anyone who wished to confess." And when Joan left the town of Blesensem to go to Aurelianis, she ordered that all the priests be gathered with that banner, and that the armed priests precede her. But before the war began, the maiden wished to affirm her mission as a sign of peace; therefore, she sent "one letter to the supreme leader of the English army, Talbot, containing in substance that the English should withdraw from the siege and return to the kingdom of England, otherwise she would give them such an insult that they would be forced to withdraw." The English, however, responded to the maiden's insults with injuries, which she bore with an unconquered spirit.

[*Latin ed. p. 494*]

494. The events entirely confirmed the prediction of the Sacred Council. The Count de Dunois, the supreme commander of the French army, recounts: "While the attack was beginning against the enemy forces within the boulevard of Pons... the attack lasted from morning until the eighth hour of the evening, so that there was no hope of victory that day; therefore, the aforementioned witness was anxious and wished that the army be withdrawn to the city. And then the Lady Joan came to him and requested that he wait a little longer; and from that hour she mounted her horse and went alone to a vineyard some distance from the crowd of people, in

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which vineyard she remained in prayer for almost half an hour; and upon returning from that place, she immediately took her banner in her hands, and placed herself upon the edge of the ditch, and at that very moment, the English were agitated and became fearful; the soldiers of the King then regained their courage, and began to advance, attacking the boulevard, finding no resistance whatsoever; and from that moment, the boulevard was captured, and the English who were within it were turned to flight; all were killed. And among other things, the aforementioned witness states that Classidas and other principal captains of the English forces, believing that they were retreating to the tower of Pons, fell into the river and were drowned. This Classidas was the one who had spoken most insultingly and with the greatest contempt about the aforementioned Lady. After the capture of the aforementioned bastion, the aforementioned witness and the Lady Joan, along with other French soldiers, returned within the city of Orleans, where they were received with great joy and reverence... On the following day, very early in the morning, the English left their tents and arranged themselves in battle formation. Seeing this, the aforementioned Lady Joan rose from her bed and armed herself with her own garments, but she did not wish that anyone attack the aforementioned English, nor that anything be demanded from them, but that they be allowed to leave; and as a matter of fact, they left, with no one pursuing them at that time. From that hour, the city was freed from the enemy." Concerning this prodigious liberation of Orleans, which a few days later all contemporaries attributed to the Lady Joan through divine intervention, it is worth noting that a discerning witness, William Girauld, Clerk of Orleans, wrote in his records, which are still preserved: "On the 7th day of the aforementioned month of May, by the grace of Our Lord, and also as if by a miracle..."

[*Latin ed. p. 495*]

From the Sacred Rituals, 495, the most evident [miracle] which has appeared since the Passion of Our Lord, was the lifting of the siege of Orleans, at which time the aforementioned Maid was leading the troops. Indeed, all believed that the Maid had been sent by God, and that she showed the signs of her mission; and the citizens of Orleans said, "If she had not come from God to help them, all the inhabitants would have been destroyed, and the city would have been surrendered to the enemy." And the Count de Dunois firmly believed "that Joan had been sent by God." When she entered Orleans, "she was received with such joy and applause by all, both men and women, young and old, as if she were an angel of God." She herself, "above all, wished to go to the greater church, to show reverence to God, her Creator," and "she encouraged all to hope in the Lord." We will be silent about the particular deeds of the Maid in Orleans, as well as other glorious deeds which followed against the English in the camps and cities of Melun, Baugency, Jargeau, Patay, for the sake of brevity, not only

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because they are well known, but because they are recorded in the summaries by eyewitnesses, and especially by the supreme leader of the French army, the Count de Dunois, who sincerely declared: "The deeds of Joan in the military campaign were more the work of God than of man"; and he added: "it was as if it were a divine thing." The same was confirmed by the King's advisor, D'Aulon, who said that the Maid's deeds were "divine and miraculous"; and this was also confirmed by the Duke d'Alençon, and other eyewitnesses examined in the Apostolic Process. Furthermore, all the cities near the Loire were, shortly thereafter, brought back into obedience to the King through the Maid's efforts. Later, the city of Troyes was also surrendered to the King, as well as Chartres and Rheims, in which city, as Joan had foretold, the King was crowned and consecrated. It is worth mentioning that, concerning this matter, the aforementioned army leader, the Count de Dunois, stated: "After these victories, the King's advisors and the Captain wished that the King should go to Normandy, and not to Rheims, but the aforementioned Maid always maintained that it was necessary to go to Rheims, to consecrate the King, and she gave her reason for this opinion, saying that as long as the King was crowned and consecrated, the power of the enemies would always be diminished, and they would not be able to finally harm him or the kingdom." To this opinion, all gave their assent.

[*Latin ed. p. 496*]

496 From the Sacred Records: And first, the place where the King stood and established his camp with his army was before the city of Troyes; while there, holding council with the Lords and other Captains of war, deliberating whether he should remain before the said city and lay siege to it, or whether it would be more expedient to pass beyond, going directly to Rheims and leaving the city of Troyes; this council of the King being divided in opinions, and those present doubting what would be most useful, the aforementioned Maiden came and entered the council, saying these words: "Noble Delphine, command your people to come and besiege the town of Troyes, and do not prolong these deliberations further, for, in the name of God, within three days I will lead you into the city of Troyes, either by love or by power, or by fortitude, and Burgundy will be greatly weakened." And then the aforementioned Maiden immediately crossed with the King's army and set up her tents near the fortifications, and she performed such remarkable deeds, that even two or three of the most renowned and famous men of arms would not have been able to accomplish them; and thus she worked that night, that in the following morning the Bishop and the citizens of that city surrendered to the King, trembling and fearful, so that it was afterwards discovered that, from the time that she gave counsel to the King not to withdraw from the city, the citizens themselves lost heart, and sought nothing but refuge and fled to the churches. And after that city was brought under the King's obedience, the King went to Rheims, where

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he found complete obedience, and there he was consecrated and crowned." When the Maiden saw the King consecrated, she knelt before him and, with tears, said to him: "Gentle King, the will of God has been accomplished, who willed that you should raise the siege of Orleans, and that you should come to this city of Rheims to receive your holy consecration, showing that you are the true King, and that to whom the kingdom of France belongs." Perhaps from these words it might be thought that the divine mission of Joan was completely fulfilled after the King's consecration. However, it must be distinguished what Joan knew she would accomplish, from those things which, by virtue of her mission, she also knew would come to pass, but after her death. For, foreseeing her own sorrows, she foresaw the near end, when she said, "that she would last for a year and not much longer, and that they would think about doing good in that year." But she herself—

[*Latin ed. p. 497*]

497 According to the records of the ceremonies, Joan had already declared to the English: "I have come here by order of God to drive you out of all of France." And the Duke of Alençon is reported to have said to Joan that she had four tasks: "to drive out the English; to have the King crowned and consecrated in Rheims; to free the Duke of Orleans from the hands of the English; and to lift the siege placed by the English before the town of Orleans." This was entirely confirmed by Father Seguin in the trial, and he added: "He saw with his own eyes that all these things were accomplished." Therefore, although some of the things that Joan predicted occurred after her death, nevertheless, the purpose of her mission was fulfilled, as she herself declared later: "She affirmed that if it was fitting for her to die before the things for which God had sent her were accomplished, after her death she would be no less a hindrance to the aforementioned English than she had been in her life, and that, notwithstanding her death, all for which she had come would be accomplished." This was confirmed by an eyewitness: "And so it was done, by the grace of God." Indeed, five years after the girl's death, the English lost the city of Paris, and shortly thereafter were driven out of all of France! However, after the King's consecration, although the advice of the Maid, which certainly would have had a happy outcome, was not followed by the King and his courtiers, she nevertheless accomplished other glorious deeds, especially in the city of Saint Peter's Monastery (Saint Pierre le Moustier) and in the city of Lagny. When Joan was at Melun in April (of the year 1430), she understood through a divine revelation that she would be captured before the feast of Saint John the Baptist. The girl did not know the day or the hour, but faithful to her mission and most devoted to the King, she bravely defended the city of Compiegne, which was besieged by the Duke of Burgundy and the English. In this city, after having heard Mass in the church of Saint James and received the Sacrament, she said to those present: "My children and dear friends, I tell you that I

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have been betrayed, and soon I will be delivered to death. Therefore, I beg you to pray to God for me, for I will never again have the power to serve the King." Indeed, on May 24th, when she had gone out of the city to scout the enemy, and the English rejected her attempt to re-enter, William Flavy, the governor of that place, closed the gates.

[*Latin ed. p. 498*]

498 From the records of the Council, it is evident that she was captured; and thus, surrounded by the army of the Burgundians, she was taken prisoner with only a few companions. Joan's captivity brought great joy to the hearts of the English, yet they vehemently desired to take her from the hands of the Burgundians and bring her under their own power. Therefore, in order that this might more easily succeed, the General Vicar of the Inquisition and the University of Paris first implored the Duke of Burgundy to surrender the maiden, as a heretic, to ecclesiastical justice. When he gave no response, the King of England, the Duke of Bedford, appealed to the Bishop of Beauvais, Peter Cauchon, who was most zealous in favoring the English. This man presented himself before the Duke of Burgundy on the fourteenth day of July, stating that the maiden had been captured within the territory of his diocese, and therefore, since the matter concerned matters of faith, he was the rightful judge. He offered him a tremendous sum of money, namely, ten thousand gold francs! The Duke of Burgundy agreed, and the maiden was sold to the English, who paid this price on October 24th of the aforementioned year, 1430, along with taxes imposed on the citizens of Normandy. Meanwhile, trusting in divine providence, the maiden maintained a lively hope that her captivity would not prevent the works of God from being accomplished. With a tranquil spirit, therefore, before being sold to the English, she remained for about four months in the castle of Beauliea; afterwards, she was sent to the castle of Beaurecoir. At that time, she knew that she had been sold to the English, and when she heard that the city of Compiegne was about to be destroyed, she attempted to escape from custody, but in vain. However, she was comforted when heavenly voices foretold her liberation before the feast of Saint Martin; which event was entirely confirmed. Afterwards, she was taken to the castle of Crotoy, where, in the month of November, she was delivered to the English by the Duke of Burgundy. During the time she remained in these castles, eyewitnesses testified to her religion and piety in the trial. Finally, in the month of December, she was transferred by the English to the castle of Rouen, where a trial against her was begun. The English, as witnesses testified in the trial, "hated Joan with all their might and desired her death by all means, because she had been in the service of the Most Christian King of

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France."

[*Latin ed. p. 499*]

FROM St. Gregory's Ritual, 499, they feared her, and feared her more than a hundred armed men, because of the victories she had obtained; and when they learned that in France she was considered to be a maiden sent by God, they were determined not to deliver her to the flames. Already, a little before, they had condemned a poor woman in Paris to the fire, simply because she had said that the maiden was good and was acting under God's command. The proceedings, as the witnesses themselves declared, "tended also to disgrace the King of France." Therefore, the English spared no effort to ensure that the maiden would also be disgraced and condemned as a heretic. And the maiden's death had already been decided by them. For the King of England, Henry VI, on January 3rd of the year 1431, wrote to the judges that if, by chance, Joan had not been condemned as a heretic and a sorceress in the proceedings, he reserved the right to keep her: "It is our intention to have and to reclaim from us that Joan, should it happen that she is not convicted or condemned of the aforementioned things." The judges, for their own protection, requested letters of defense from the King: "The Bishop and others who were involved in this kind of proceeding, wanted to obtain a guarantee letter from the King of England, and they obtained it." In these letters, the King wrote: "We promise, by our royal word, that we will help and support all of the aforementioned judges, doctors, masters, etc., at our own cost and expense, and we will join them in any proceedings they may wish to bring against any persons." Everyone will understand how the proceedings against the maiden were conducted! Contemporary witnesses, examined impartially, testified that the proceedings were constructed "by the instigation and influence of the English, who always kept Joan under their custody and control, and did not allow her to be held in ecclesiastical prisons." A contemporary historian wrote that, from this proceeding, the maiden's suffering began: "The judges did not show themselves less eager to make the aforementioned maiden die, than did Caiaphas and Anne and the scribes and Pharisees to make our Lord die." Eyewitnesses reported that she was in the prison "in iron shackles, and chained with a long chain attached to a beam, and she also wore an iron hood, in which it was said that she was to be locked." Certainly, she was "bound at the neck, hands, and feet from the time she was brought to the town of Rouen until the beginning."

[*Latin ed. p. 500*]

500 FROM THE SACRED RITUALS: The process ». The jailers were the most wicked men, shameless and defiled by every vice: "In the prison were five Englishmen of miserable condition, whom they called 'houcepailUerS,' who guarded her and greatly desired her death, and they often mocked

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her about it." Concerning the injustice of the process, which lasted four months, please hear the testimony of several witnesses: "The Bishop of Beauvais did everything at the instigation of the King of England and his Council, then existing in Rouen. He was not moved by zeal for justice, but by the will of the English themselves, who were then in large numbers in the city of Rouen, where the King of England was." "All who were present at this kind of process were not in full freedom, because no one dared to say anything lest they be marked." Some councilors complained about the way the girl was being treated, including Master Nicholas of Houppeville, and they said that she should be in the hands of the Church, but Bishop Cauchon ensured that they were all exiled. Hear, among others, Reverend Dom. John Massieu, the gatekeeper of the Tribunal: "Master Nicholas of Houppeville, who, seeing this kind of procedure, refused to participate in the councils, was banished along with several others." Master John of Fonte was expelled from the Council "because he had said things that did not seem to him to be done in this process." Master John "refused several times to participate in this kind of process, and he made it clear that he would not be present, but through some people known to him, he was told that if he did not participate, he himself would be in danger of death; and this was pressure from the English, as he often heard from the aforementioned Master, who said to him: 'I see that if this matter is not carried out according to the will of the English, death threatens.'" When someone said about Joan that it did not please Lord of Stauffort, "he pursued him to a certain place of immunity with a drawn sword." However, the girl never had a defender or patron: "She had no defenders or counselors, although she requested them"; indeed, a perverse man, a certain Nicholas Loyseleur, was cleverly sent by the judges into her prison to deceive her: "They had learned that Nicholas Loyseleur, pretending to be from the regions of Lorraine, of which the aforementioned Joan was, and of the obedience of the King of France, would enter the prison in short clothes, and that the guards would step aside." "At one time, he entered.

[*Latin ed. p. 501*]

FROM the Sacred Rites, 501, they took the prison of Joan and said to her that she did not believe in those nations of the Church. The Bishop of Belvacensis knew this well, because otherwise, Loyseleur himself would not have dared to do such a thing. And Joan was given permission at that time to confess to this man: "It was not permitted to confess except to Master Nicholas Loyseleur!" Finally, concerning the nullity of the Process, it is sufficient to say that some notaries were hidden away so that they might write the girl's responses in a different way: "There were some notaries (among others, William Manchon, notary of the Episcopal Court) and he believes that Nicholas Loyseleur was with those who were hidden, who observed what the notaries were writing, and wrote what they wanted, omitting

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Joan's excuses." However, some judicial investigations that were carried out, and which favored the girl, are completely lacking in the Process! Indeed, it is certain, for example, that a judicial investigation was carried out in the place of Joan's origin, which is not found in the Process; and it is also certain that another investigation was carried out concerning the girl's virginity, as the witness John Massieu, among others, testified: "She was examined to see if she was a virgin or not, by matrons or midwives, by order of the Duchess of Bedford, and specifically by Anne Bavon and another matron. And after the examination, they reported that she was a virgin and chaste, and this was reported by the same Anne." Therefore, the Process is also flawed! Truly admirable was the girl's conduct during the Process. For she, who had not yet reached her twentieth year, was so composed in mind and answered the judges' questions with such prudence, that everyone marveled at her. The notary of the Episcopal Court of Rouen, examined in the Apostolic Process, stated: "He believes that in such a difficult case, she would not have been sufficient to defend herself against so many Doctors unless she had been inspired." And another witness stated: "He heard from the mouth of the then Abbot of Fiscarnpuensis, that one great cleric had greatly failed in answering the difficult questions put to him." And although "the interrogators did not cease to question her for three hours in the morning and the same in the afternoon, and sometimes interrupted the questioning, moving from one thing to another, to see if she would change her mind," she answered in such a way...

[*Latin ed. p. 502*]

502 FROM THE SACRED RITUAL: "lest the more prudent man, having answered with difficulty." Concerning her religion and piety at this time, witnesses testified that she repeatedly begged to be allowed to attend Mass, especially on festive days, and to receive the Most Holy Eucharist, "and she was greatly distressed that it was denied to her." The Reverend Priest, John Massieu, testified that he had the burden "of leading and bringing Joan before the judges, and it was clear to him that she was a good, simple, and devout girl, and as he led her before the judges, she asked him if there was a chapel on their way where the Body of Christ was present, so that she might there salute God and pray; which he gladly did, and he allowed the same Joan to kneel before the chapel and offer her prayers there, which she did with great devotion, kneeling there." Regarding this, the Bishop of Cattolica was displeased, and forbade him from allowing her to pray in that manner again! During the process, when the girl became ill, the English were greatly alarmed, fearing that she might die a natural death. Hence, several doctors were sent to her, one of whom testified in the Apostolic Process: "They sent the aforementioned with William Desjardins, a master of medicine, and other doctors... The Earl of Warwick told them that he had ordered them to consider the matter, because the King did not want

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her to merit his death by natural causes. For the King had bought her, and he did not want her to die except justly, and to be burned." After the girl's health was restored, but not yet fully confirmed, the process proceeded without delay. Joan repeatedly declared in her responses that she wished to submit entirely to the Catholic Church. But the judges urged her to submit to them, as representatives of the Church! Witnesses who were examined in the Apostolic Process heard in court "that when Joan was asked whether she wished to submit to the Bishop of Cattolica and some of those present, Joan replied that she did not, and that she submitted to the Pope and the Catholic Church." "When asked whether she wished to submit to Our Lord the Pope, she replied that she did. But she did not wish to submit to those present, because they were her capital enemies." This response, which the judges themselves had anticipated, was used as the basis of the accusation, falsely implying that...

[*Latin ed. p. 503*]

From the Sacred Canons, 503, concerning Joan's refusal to submit to the Church. Another point of accusation presented to the judges was her visions and revelations, which they asserted were inspired by a malevolent spirit, and especially the male attire which Joan had said she wore by divine command. These accusations were reduced to twelve false articles. Some, especially from the University of Paris, were greatly offended by the young woman, and even those who were ignorant of the proceedings expressed their opinion against her; but there were others in France who defended her vigorously; indeed, prayers for the liberation of the young woman were composed at this time. However, the nullity and malice of this process were so evident that when the most celebrated priest, John Lohier, Dean of the Roman Rota, arrived from Normandy in the city of Rouen, he (as testified by the Notary of the Rouen Curia in the Apostolic Process) "was asked to give his opinion on the aforementioned process, and in the presence of the Bishop, he declared that the process was null for many reasons; and because he saw that his words did not please the Bishop of Beauvais and other lords from England, he refused to wait any longer and adjourned to the next day." For the English had decreed that he should be thrown into the Seine River! Later, other learned men, some of whom held ecclesiastical positions, clearly demonstrated the injustice and nullity of the process in their writings, such as Cardinal Elias of Bourdeille, Bishop of Périgueux and Sarlat, John Gerson, Theodore de Lelli, Auditor of the Roman Rota, Pontanus, Advocate of the Sacred Consistory, and other most serious jurists. The young woman, until the very end of the process, and even before the torturer, never wished to retract her visions and revelations, although the judges had used every artifice to induce her to declare them false. Indeed, it was greatly important to the English that, before she was condemned, she herself should declare her visions and revelations to be

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false and deceitful. For if the opinion of the people that the young woman was sent by God had remained in their minds, it would have been a great obstacle to their plans. Therefore, the judges, in order to achieve their desired outcome, tried the last remedy against the young woman, namely, the opinion of the people and the executioner. Thus, on May 24th (1431), she was led to the square of the cemetery of Saint Audoen (Saint-Ouen), where, in a spectacle that had been set up, the Bishop was present along with...

[*Latin ed. p. 504*]

By order of the Cardinal of Winchester, and before judges, doctors, and many others, Joan was standing in a certain pulpit before everyone, and she also saw the executioner "who was in the town with his cart, waiting for what would be given to him to burn." But before this, Nicholas Loyseleur, who, as we have seen, was cleverly betraying the girl, had said to her: "Joan, believe me, for if you wish, you will be saved; do everything that is ordered you, otherwise you are in danger of death; and if you do what I tell you, you will be saved and will have much good and no evil, and you will be handed over to the Church." Master William Erard gave a sermon, and among other things, he spoke out against the King of France, saying: "O Kingdom of France! Formerly you were esteemed and called the most Christian, and your kings and princes were the most Christian; but now, through you, O Joan! and through the King who calls himself King of France, by adhering to you and believing your words, you have become heretical and schismatic!" The girl, for her humility, said nothing about herself, but she wanted to defend her king, saying: "Do not speak ill of my King, he is a good Christian." Master William Erard silenced Joan, and concluded his sermon. But Joan, as eyewitnesses testified in the Apostolic process, said: "that she had done nothing wrong and that she believed in the twelve articles of faith and in the ten commandments of the Decalogue, and further that she referred herself to the Roman Church and wanted to believe in all that the holy Church believed." However, the Bishop informed Joan that there were ordinaries in his diocese who were judges, and therefore she should submit to them. Meanwhile, Master Erard showed the girl a document of abjuration for her to sign. But she declared: "Let this document be seen by the clergy and the Church, in whose hands I must be placed, and if they give me advice that I should sign it and do what is told me, I will gladly do so." But Master Erard replied to her: "Do it now, otherwise you will end your days today." At the same time, the reading of the sentence of condemnation began. The girl, weakened by her efforts, frightened by the threats, and overwhelmed by so much advice and exhortation, had to yield, "referring herself to the consciences of those judging." Then a small document of abjuration was read to her, which ordered her not to wear male clothing, not to carry weapons, and other things of this kind. The

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document was small, and she could not see it clearly.

[*Latin ed. p. 505*]

From the *Sacramentarium Romanum*, number 505, it could contain only a small amount. Indeed, if, on the contrary, much had been written on that document, especially concerning the girl's visions and revelations, the judges certainly feared that her conscience might deviate from the intended purpose. And we know from the testimony of Joan Massieu herself, who read the abjuration document to her at that time, "that the document contained approximately eight lines and no more, and she firmly knows that it was not the one mentioned in the proceedings, because she herself read a different one from the one inserted in the proceedings, and Joan herself signed it!" And other witnesses, present there, fully confirmed this. Therefore, a different and longer abjuration document was inserted into the proceedings! Moreover, since the girl did not know how to write, when the document was given to her, she "made a certain circle on it, as a mockery." Afterwards, she asked the prosecutor whether it would be placed in the hands of the Church, as she had been promised, but on the contrary, she was condemned to perpetual imprisonment in the very castle of Rouen, under the same custody of the English! The multitude of those who witnessed this spectacle began to riot: "there was a great uproar among the people standing there, and many stones were thrown." And the Earl of Warwick was enraged, but one of the judges said to him: "My Lord, do not worry, we will restore her." Indeed, when the girl returned to the same prison after midday on Thursday, May 24th, dressed as a woman, she suffered much at the hands of the English. For: "after being placed again in the prisons of the castle, so many vexations were inflicted upon her that she had to say that she would rather die than stay any longer with those English." These people were so enraged, even with the judges, that after three days, when some of them entered the castle to see Joan, they were violently rejected by them: "they drew their swords to kill them, saying that the King had spent his money badly on them." At this time, the girl again put on male attire, because, as a witness heard from her: "in the morning, Joan lying in bed, the guards took her woman's clothes from her bed, and placed a male garment on the bed; and although she asked the said guards to return her woman's clothes to her, so that she could get up from the bed and relieve herself, they refused to give it to her, saying that they did not have another; and when she told them that they well knew that the judges had given Joan—"

[*Latin ed. p. 506*]

506 EX. S. C. RITUUM, it is forbidden to resume the male habit, nevertheless, they refused to give the same Joan the female habit; and finally, compelled by necessity, she had put on the male habit; and after having

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been seen in that resumption of the habit throughout the entire day, the female habit was restored to her for the following day. But then she refused to resume it, in order to better safeguard her virginity. She acted very well in this regard, since not only was she pressured by the guards, but "she was also tried by a man of great authority with violence!" And this was also confirmed by Father Martin Ladvenu, who heard from the same Joan that a certain great lord from England had entered the prison of the aforementioned Joan and tried to force her, and this, she said, was the reason why she had resumed the male habit. Indeed, the Notary of the Rouen Court, William Manchon, testified that, in his presence, Joan was questioned by the judges "as to the reason why she had resumed such a male habit, to which she replied that she had done so for the defense of her chastity, because she was not safe in the female habit with her guards, who wanted to attack her chastity, and about which she had complained to the Bishop and Corniti on several occasions; and that the judges had promised her that she would be in the hands and prisons of the Church, and that she would have one woman with her; saying further that if the aforementioned judges would place her in a safe place where she would not fear, she was ready to receive the woman's habit, as is stated in the proceedings." The Bishop Cauchon, seeing such heroic fortitude in the girl, who was facing certain death in order to preserve her virginity, cleverly changed the subject, and asked her if she had had any other visions; to which the girl candidly replied that she had been reprimanded by heavenly voices for the abjuration, which she nevertheless declared she had made by force and fear, without understanding it, as the aforementioned notary, who was present at this conversation, testified: "She said that she had not understood anything about the contents of that abjuration, nor did she want to retract anything, nor did she want to." Finally, when asked if she would resume the female habit, she replied that she was ready to do so, provided she was placed in a safe place. The Bishop departed with the judges; but some of them, as the witness recounted, "were making a great display of applause and joy because she had resumed the male habit." And another witness affirmed "that she was forced - "

[*Latin ed. p. 507*]

From the Sacred Rites, 507, it is said that the Bishop heard someone exclaim, while the English were rejoicing, "The Lord of Warwick and other English are triumphant! She is captured!" The following Tuesday, May 29th, the Bishop assembled the judges, and it was decreed that the girl should die, as a relapsed heretic. The next day, the thirtieth, early in the morning, two priests were sent by the Bishop to the prison of Joan, to prepare her for death. Hearing that the poor girl was to be burned, she began to weep, lamenting the wickedness of men who were handing over her innocent body to the fire, and she grieved about the Bishop, "who had

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promised to place her in the hands of the Church, and had abandoned her in the hands of his own capital enemies." However, she immediately raised her spirit, overcome by sorrow. For, completely trusting in God, when she was asked, "Do you not have good hope in the Lord?" she replied that she did, and that, with God's help, she would be in Paradise. After receiving the sacrament of penance from Father Martin, she herself requested the most holy Eucharist. Regarding this matter, the Bishop was questioned, for Father Martin sent the Reverend John Massieu to him to inform him "how it had been heard in confession, and that she was asking to be given the sacrament of the Eucharist." The Bishop then gathered some people to deliberate on this matter, and, after their deliberation, he said that he would give her the sacrament to the Church. Thus, Father Martin, as he himself testified, "administered to her the Body of Christ, which she received most devoutly and with great tears, in a way that she could not express, humbly receiving it. And from that hour, she did not leave her until the departure of her spirit." Then the girl was taken to the marketplace, surrounded by about eight hundred English soldiers. Above her head, written on a paper, was: "Heretic, sorceress, apostate, relapsed." As the aforementioned Massieu, the gatekeeper of the tribunal, said, "During her procession, she made such heartfelt lamentations that even I, as I spoke, and Father Martin, could not restrain our tears, for she so devotedly commended her soul to God and the Saints, that those who heard her were moved to tears." The treacherous Loyseleur, when he saw the girl, "was moved in his heart, and he went up to the chariot, wanting to call out to Joan to ask for forgiveness, but many of the English present were indignant at this, so that if the Earl of Warwick had not been there, Loyseleur himself would have been killed." In the marketplace...

[*Latin ed. p. 508*]

508. According to the custom of the time, there were three spectacles, two for the judges and prelates, and the other "where the wood was prepared for the burning of Joan." When she arrived in the square, wearing the long tunic that she had requested, she heard a sermon from Master Nicholas of Mire before a large crowd of people. After this, he said to the girl: "Go in peace; the Church releases you into the hands of the secular world." Some of the assessors rightly requested that the formula of abjuration be read to her again; but unjustly, the sentence of condemnation was immediately pronounced, without any judgment from a secular judge. For "she was captured by the English and led to execution with great fury." The girl, kneeling, repeated her prayers to God: "she made her prayers to God with great devotion." She asked for forgiveness from everyone: "asking forgiveness from the judges and from the English, from the laws of France, and from all the princes of that kingdom." She also asked the priests "that each of them would say one Mass for her." Furthermore, the Reverend

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Massieu testified, as he himself stated: "that she wanted to have a cross; and then a certain Englishman present there made a small cross from a piece of wood, which she kissed and placed in her bosom, with great devotion. However, she still wanted a cross from the Church, and she received one." Then, greeting those present, "she was led by the executioner to the place where the wood was prepared for her burning, which was in the scaffold, and the executioner himself placed the fire below." At this final hour, the girl clearly understood the prophecy of her liberation, which she had heard from heavenly voices: "You will be delivered; do not despair of your martyrdom; you will come to the kingdom of Paradise." Then she clearly perceived that her own death was related to her mission. From this point on, she commended herself not only to God and the Virgin Mary, but also "to Saint Michael, Saint Catherine, and all the Saints"; and she said that she had done everything by order of God, as her confessor, Martin Ladvenu, testified: "Until the end of her life, she maintained and asserted that the voices (which she had heard) were from God, and that whatever she had done, she had done by order of God, and that she did not believe that she had been deceived by those voices, and that the revelations which she had received were from God." She also begged the same confessor "to raise the cross of the Lord high, so that she could see it, which he did, and she embraced it and wept."

[*Latin ed. p. 509*]

"From the Sacred Canons, 509, it is commanded that they be kissed." Finally, amidst the flames, constantly uttering the name of Jesus, she breathed her last: "How long, O Lord, how long?" The holy death of the young girl aroused such admiration from all that even her enemies were greatly terrified. John Tressart, secretary to the King of England, "returning from the place of Joan's execution, wept bitterly and lamented the things he had seen, saying: 'We are all lost, because a holy person has been burned, and I believe her soul is in the hand of God.'" The executioner himself confessed: "She suffered a tyrannical death, and I am very afraid that I will be condemned, because I burned a holy woman." Master John Ad-Ensem, canon of Rouen, said, weeping marvelously: "Would that my soul were in the place where I believe the soul of this woman to be!" And likewise, Father Martin Ladvenu, Joan's confessor, desired the same. The judges and those who were present at the girl's execution, as witnesses, testified: "They incurred great hatred from the people, for after Joan was burned, the people pointed them out and abhorred them." Furthermore, miracles occurred. "Many saw the name of Jesus inscribed in the flame in which she was burned." A certain Englishman, who was a bitter enemy of the girl, and who had said that he wanted to place thorns on her pyre, while watching her death, remained stunned and motionless, and afterwards declared that he had seen a dove fly out from the flames. The girl's heart

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"remained unharmed and full of blood," which the executioner himself confirmed. The English wished that, with the ashes of the girl, her heart be thrown into the Seine River, so that the people would not venerate her relics. Finally, punishments were inflicted by God upon the tyrants, for "all those who were guilty of her death died a most shameful death." Bishop Cauchon "died while having his beard dyed black." Nicholas Midi was struck with leprosy a few days later. William Estivet, the promoter, "was found dead in the pigeon loft outside the gate of Rouen." Loyseleur died suddenly at Basle; and the Duke of Bedford died four years later in the same castle where he had imprisoned the girl! Shortly afterwards, as she had foretold, the English were driven out of the city of Paris, then from Normandy, from Aquitaine, and from all of France!

[*Latin ed. p. 510*]

510 FROM THE SACRED RITUAL. After the disturbances in Gallia had been quelled, when Charles VII entered the city of Rothomagensem, he decreed an investigation into the case of the girl, but afterwards, the girl's family, namely her mother and two brothers, wished to present a petition to the Holy See on this matter, which Cardinal Legate William d'Estouteville presented to the Supreme Pontiff Callistus III, and obtained a benevolent response from him on the eleventh of June of the year 1455, by which he instituted three Apostolic Judges, namely Juvenal de Ursiniis, the Archbishop of Rhemensem, William Chartier, the Bishop of Parisiensem, and Richard de Longueil, the Bishop of Constantiensem. Judicial investigations were carried out in the girl's homeland, as well as in Aureliae, Parisiis, and in the city of Rothomagensem. One hundred and twenty-three witnesses of all ages and conditions were subjected to examination under oath of religion. Finally, on July 7th of the year 1456, the judges issued a sentence of rehabilitation, in which the girl's innocence and the nullity of the condemnation in the process were declared "as fraudulent and malicious," as well as the abjuration "false, deceitful, and null."

TOLOSANA. Decree of confirmation of the cult of the Servant of God, Joan of Toulouse, a Carmelite nun of the ancient observance, now blessed. Joan of Toulouse, born at the beginning of the 13th century into a noble family, from her childhood showed the best qualities in piety, obedience, honesty, and gentleness of character. As a young woman, nothing pleased her more than to propose to herself, as examples, faithful Christians and, especially, religious persons then renowned for their virtue; and having rejected worldly riches and the temptations of the world, she dedicated herself entirely to God, as a humble servant. Hence, when the brothers from Mount Carmel from Palestine arrived in Toulouse around the year 1240 and established a house there; and when Blessed Simon Stock, the General of the Carmelites, passing through that city on his way to Burdigala around the year 1265, Joan, seizing the opportunity, requested to receive the habit

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of the Carmelite Order, and received it from the General himself, with whom she also made a vow of chastity. Remaining in her father's house, she daily frequented the church of that Order nearby, in order to attend the Sacrifice of the Mass; and there she was frequently strengthened by the divine Sacraments, and she performed all the duties of devotion with great pleasure. She was a most observant follower of the entire Rule of St. Albert, the first tertiary of the Carmelite Order, and a diligent founder. She was most devoted to penance and charity, as well as...

[*Latin ed. p. 511*]

511 FROM THE LIFE: He was joined by the observance of the Rule, which, by mortifying the body and denying it the pleasures of life, provided what was necessary for the support of the poor and those suffering from illness or infirmity. He was not only concerned for the bodies, but especially for the souls of the poor and sinners, and he exercised works of spiritual mercy with great generosity. He found great delight in reading and meditating on the image of Jesus crucified, and he often held it in his hand, kissed it, and moistened it with his tears. Finally, having accumulated a store of virtues and merits, he peacefully departed this life in the Lord on March 31, 1286, and his body was buried in the church of the Carmelites in Toulouse. Immediately, citizens and pilgrims, drawn by the fame of his sanctity, gathered at the tomb of Joan, to implore his help from God, and to venerate his sacred relics with religious devotion. When, indeed, the unmemorable, public, and ecclesiastical cult, which has been abundantly confirmed by numerous documents written both before and during the time of Urban, and recently brought to light, is considered, the judge, Most Reverend Monsignor Julian Florian Felice Desprez, Archbishop of Toulouse, specially appointed to investigate this cult, which has been practiced from time immemorable, that is, before the year 1534, and which has never been interrupted and has continued to this day, pronounced a favorable judgment on Joan of Toulouse. Therefore, at the urgent request of the same Most Reverend Cardinal, together with the Most Reverend Aloysius Galli, Prior General of the Order, the Carmelite Communities, and several Bishops of France, His Eminence and Most Reverend Cardinal Vincent Vannutelli, Promoter of the Cause, proposed the following question for discussion at the meetings of the Congregation of Sacred Rites, convened at the Vatican: "Whether the judgment rendered by the judge delegated by the Most Reverend Cardinal Archbishop of Toulouse, concerning the cult practiced from time immemorable by the aforementioned Handmaid of God, or concerning the exception from the Decrees of Pope Urban VIII, should be confirmed in this case and for the purpose in question?" After careful consideration by the Most Reverend Fathers entrusted with the preservation of the Sacred Rites, and after hearing the voice and written opinion of the Reverend

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Father Augustine Caprara, Promoter of the Holy Faith, it was decided to respond: "Affirmatively, that is, the judgment should be confirmed." January 29, 1895. Subsequently, a report on these matters was made by me, the undersigned Cardinal, Prefect of the Congregation of Sacred Rites, to His Holiness Pope Leo XIII, and His Holiness approved and confirmed the Decree of the same Sacred Congregation on February 11 of the same year. C. CARD. ALOISI MASELLA, Prefect of S. R. C. L. * S. ALOISIUS TRIPEPI, Secretary.

[*Latin ed. p. 512*]

DECREE OF THE HOLY CONGREGATION OF THE SACRED ROMAN AND UNIVERSAL INQUISITION. Concerning the law of fasting and abstinence, which Bishops may anticipate or dispense from. On the fourth day of December, 1894. Since recently, numerous petitions have arrived at this Most Holy Congregation of the Sacred Roman and Universal Inquisition from many Bishops, all of whom share the same concern: that the law of abstinence, about which they are greatly worried, may be very difficult and, for various reasons, not easily observed by the people, and rather offer an occasion for the ruin of souls than for their salvation. The Most Eminent and Most Reverend Lords, Cardinals, in their Sacred Eminence, General Inquisitors against heretical perversity throughout the Christian republic, after fully considering and maturely deliberating the matter, in a plenary session held on the fourth day of December, 1894, decreed as follows: They implore the Most Holy [Father] to deign to grant to Bishops and other local Ordinaries the faculty of anticipating, on a day of their choosing, and also, for very serious reasons, of dispensing from the law of fasting and abstinence, when the feast day of the Principal or Titular Patron, or some other solemn feast also celebrated with a large gathering of the people, falls on a Saturday or a weekday during the year, except during the time of Lent, on the four days of the year, and on the vigils consecrated to fasting throughout the year; and that they may use the same power to anticipate, or even to dispense, for very serious reasons, on the days on which extraordinary market days are held, also with a large gathering of the people. After a report was given by the Reverend Father Assessor of the Sacred Office to the Most Holy Lord, our Pope Leo XIII, the same Most Holy Lord approved and confirmed the present decree, and granted and assigned to all and each local Ordinaries the faculty of which we are speaking, for all future times, provided that in each case, mention is made of the apostolic dispensation.

Ios. MANCINI, Notary of the Sacred Roman and Universal Inquisition.

[*Latin ed. p. 513*]

From the Consistorial Acts, concerning the Consistory held on March 18, 1895. His Holiness Pope Leo XIII held this day in the Apostolic Palace

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at the Vatican a secret Consistory, in which He pronounced the following allocution:

ALLOCUTION of His Most Holy Lord Leo XIII, by Divine Providence Pope, given in the Consistory on March 18, 1895, to the Cardinals of the Holy Roman Church, in the halls of the Vatican.

Venerable Brothers:

In Our letters sent once and again to the Venerable Bishops of Hungary, when We considered what the passage of time seemed to portend for the Catholic name there, We made it not obscurely known that We anticipated future troubles. Indeed, those things which We feared have begun to erupt more quickly.

It is easy to understand to what Our words refer: namely, to those matters which have recently been decided concerning marriages in Hungary. The so-called civil marriage law has been enacted: the possibility of divorce has been permitted; it has been decreed that it is permissible to enter into marriage in the Catholic manner, but that the civil rite must be performed beforehand.

Indeed, the Bishops, as they ought, have experienced and are endangered by these things, so that they may defend the Church and the State from so much evil. The clergy have labored with the same purpose as the Bishops, devoting their efforts to those who, from both orders, wish to preserve the faith received from their ancestors and forefathers. But all of this labor, for the most just and most holy cause, has been in vain: those have been more powerful who conspire to profane civil customs and to drive the Hungarian nation into the turmoil of new things.

Yet, it was necessary to fear for the religion to which Hungary owes the greatest strength of its empire and the glory of its name; for which it has so often, with memorable virtue, fought against the fierce attacks of enemies; which, having been inviolably preserved through many great trials, is today diligently and steadfastly defended by the great majority, as the greatest of goods.

It is by no means necessary, nor is it Our intention, to speak at length to show what sort of laws these are that We have just mentioned, and how Our predecessors, the Roman Pontiffs, have, as truth demanded, judged them at various times.

[*Latin ed. p. 514*]

514 FROM THE CONSISTORY ACTS, especially because We Ourselves have, in another place, discussed this matter concerning Christian marriage, drawing from the Church's perpetual and unchanging doctrine. Nevertheless, we cannot, without neglecting our duty, entirely pass over this matter. Let those who are most concerned see how calamitous and unjust it is to prescribe a form for entering into marriage for the Catholic people, a

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form which has been condemned by the Church's judgment time and again. It is the duty of those who govern the state to understand and decide what unions are permissible in the civil order; but it is the duty of the Church to determine the very nature of the marital bond, because Christ the Lord bestowed upon His Church the power to do this when He transformed the natural contract of marriage into the Sacrament. Furthermore, it is essential for Christians to remember the unity and perpetuity of marriage; for if these are removed, that very foundation is undermined upon which Jesus Christ commanded the Christian family and the Christian state to be established. To this divine will, no human being may lawfully oppose. To these causes of distress and sorrow brought from abroad, are added those that surround the home. Without pursuing each one in detail here, consider how many bishops, destined for various sees throughout Italy, have had the execution of their appointments delayed day after day, by the so-called "apostolic letters." This clearly amounts to hindering the course of apostolic authority, and obstructing the rightful and natural prerogative of the Roman Pontiff, whose duty it is not only to support the bishops, but also to place them in their assigned positions, without any impediment. Moreover, the Apostolic See is most careful in the selection of bishops, and it has always been accustomed to choose only those who have been proven to possess integrity of life and soundness of doctrine, as well as experience and a certain maturity of judgment; and of such, the state has nothing to fear, but rather much to hope for. Finally, it seems that those who caused this injustice have now understood the wrong they have done, and we have seen that the obstacles that existed before have been removed. Therefore, we are not without great concern and care. And since once a voice has been heard in favor of equity and justice, it is right to trust that no further obstacles of this kind will arise. — Although, if the Apostolic See has done enough in this matter, it does not follow that Our present condition, which is injurious to the Roman Pontiff and not fortunate for the Italian people, should not be greatly changed; to this condition We consent.

[*Latin ed. p. 515*]

From the Consistorial Acts, 515, we desire that, in no way, either the sanctity of the law or the conscience of duty be disregarded. We claim all the legitimate liberties of the apostolic office, all the rights of the Apostolic See, and, with the same firmness, we shall claim them at no time. Furthermore, the authority of Our office primarily demands, on this day, that the Chaldean Church, having been deprived of its Patriarch, be attended to, due to the passing of the venerable Brother Peter Elijah Obolonian, whom We ourselves, in a Consistory, duly confirmed as Patriarch of the Chaldean Mission "Sui Iuris" of Baghdad. He peacefully departed this life in the year preceding, on the twenty-seventh day of June, having been commended for his integrity, religion, and beneficence. To this

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man, moreover, this praise is due, that, specifically after having humbly accepted all the decrees and commands of the Constitution "Cum Ecclesiastica Disciplina," he remained, for the remainder of his time, willingly and steadfastly in obedience to the Apostolic See. – Now, upon his death, the Chaldean bishops, having assembled in the church of the Blessed Virgin Mary near the village of Alkosch, with all their votes, elected the venerable Brother George Ebed-Jesus Khayyath, Archbishop of Amida (Diarbekir) of the Chaldeans, as Patriarch. The bishops, having voted in this matter, sent letters to Us; and the elected Patriarch also sent, as is customary, a profession of his obedience to the Roman Apostolic Church, along with the usual declaration of the Catholic faith. In these same letters, both they and he request that We be pleased to confirm the election and to bestow upon the elected the sacred Pallium, with Our apostolic authority. Having considered the qualities of mind and character that commend the venerable Brother George Ebed-Jesus Khayyath, there is hope that he will worthily fulfill the common expectation, and that he will exercise the office entrusted to him with great benefit to the Chaldean Church. Regarding this entire matter, having been permitted to be known by Our Sacred Council, which is dedicated to the affairs of the propagation of the Christian faith among the Eastern Churches, and according to the judgment of that Sacred Council, We have decided to confirm the aforementioned venerable Brother as Patriarch of the Chaldean Church of Babylon, and to grant him the Pallium, taken from the body of the Blessed Peter, today. Therefore, by the authority of Almighty God, and of the holy Apostles Peter and Paul, and by Our own authority, We confirm and approve the election or request made by the venerable Brothers, the bishops of the Chaldean rite, concerning the person of the venerable Brother George Ebed-Jesus Khayyath, appointing him as Patriarch and Pastor of the Chaldean Church of Babylon, as stated in the decree.

[*Latin ed. p. 516*]

516 FROM THE CONSISTORY ACTS and the Consistory schedule, it is expressed: notwithstanding any contrary matters. In the Name of the Father, and the Son, and the Holy Spirit. Amen. What remains, we proceed to the appointment of Bishops. After this address, the Most Holy Father proposed the following sees: the Patriarchal Church of Babylon, vacant due to the death of the Most Reverend Father Peter Elias Abolionan, the last of those Patriarchs, who died outside the Roman court, with the favor of the Most Reverend Father George Ebed-Jesus Khayyath, Archbishop of Amida (Diarbekir) of the Chaldean rite, unanimously elected or nominated by the Most Reverend and Reverend Bishops of the same rite, duly assembled in the church-monastery of the Blessed Virgin Mary near Alkosh, by the benignity of his Holiness. The Most Reverend Father George Ebed-Jesus Khayyath, being sixty-eight years of age, who, in the month of October

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of the year 1860, was appointed Prefect of the Church of Amida by his Patriarch, Joseph Audo, of the Religious Order, and in the month of March of the year 1879, was promoted by the Apostolic See to the See of Amida (Diarbekir) of the Chaldean rite. He, whether during his previous office or during the latter, not only resided there, solemnly celebrated the pontifical rites, performed the sacred ordinations, but also strengthened the sheep entrusted to him in the Catholic faith and unity. The Archiepiscopal Church of Catania, vacant due to the death of the Most Reverend and esteemed Joseph Maria Benedict, formerly Cardinal Priest of the Sacred Roman Edict, the last of those Archpriests, who died outside the Roman court, with the favor of the Most Reverend Father Joseph Francica Nava of the Dynasty of Bontifè, Archbishop of Heraclea. The Metropolitan Church of Fogaras, perpetually, and also by name and title, adorned with Alba Iulia, of the Greek rite of the Sacred Roman Edict, vacant due to the death of the Most Reverend and esteemed John Vanesa, the last of those Archpriests, who died outside the Roman court, with the favor of the Most Reverend Father Victor Mihalyi de Apsia, Bishop of Lugoj of the Romanian rite, by the nomination of Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary, Apostolically. The titular Archiepiscopal Church of Scythopolis, certainly vacant, with the favor of the Most Reverend Father Mariano Gavasci, Bishop of Nursia. The titular Archiepiscopal Church of Sardinia, vacant due to the promotion of the Most Reverend Father Julius Tonti to the metropolitan See of Port-au-Prince, with the favor of the Most Reverend Father John Ponzi, Archbishop of Metropolis. The Metropolitan Church of Durango, vacant due to the death of the Most Reverend and esteemed Joseph Vincent Salinas, the last of those Archpriests, who died outside the Roman court, with the favor of the Reverend Father Joseph Jacob Zubiria and Manzanera, Priest of the archdiocese of Durango. The Reverend Father Jacob Zubiria and Manzanera, born of legitimate, Catholic, and honest parents of Durango, and having surpassed sixty-one years of age, who, some time ago, received the doctoral degree in sacred theology, has administered the care of souls for five lustra, and is currently a Canon of the Metropolitan Church of Durango and Vicar Capitular, having renounced that office during the vacancy of that see. The titular Episcopal Church of Neo Caesarea, vacant due to the death of the Most Reverend and esteemed Placid Louis du Chemin, the last of those Bishops, who died outside the Roman court, with the favor of the Most Reverend Father Aloysius Lazzareschi, Bishop of the suppressed order of Gubbio. The Cathedral Church of Gubbio, vacant due to the translation of the Most Reverend Father Aloysius Lazzareschi to the titular Episcopal Church of Neo Caesarea, with the favor of the Most Reverend Father Macara Sorini, Titular Archbishop of Philippopolis. The Cathedral Church of Comen, vacant due to the promotion to the See of Milan of the Most Reverend and Eminent Lord Andrea, with the title of Saint Anastasia, Cardinal Priest of the Sacred Roman Edict, with the favor

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of the Most Reverend Father Theodore Ernesti Mariae Valfrè de Bonzo, Bishop of Cuneo. The Cathedral Church of Fulginata, vacant due to the translation to the titular Church.

[*Latin ed. p. 517*]

FROM THE CONSISTORY ACTS 517: The Episcopal See of Zamen is vacant. The Reverend Father Albini-Angeli Pardini, with the favor of the Reverend Father Charles Bertuzzi, Bishop of Realino. The Cathedral Church of Catherine is vacant, due to the death of the Most Reverend Tryphon Radonicich, the last Bishop of that Church, outside the Roman Curia, with the favor of the Reverend Father Francis Uccellini, Bishop of Benda, who was translated to that Church upon the nomination of Francis Joseph I, Emperor of Austria, as well as King of Dalmatia, by virtue of an Apostolic Indult. The Cathedral Church of the City of Pieve is vacant, due to the death of the Most Reverend Paul Gregory, the last Bishop of that Church, outside the Roman Curia, with the favor of the Reverend Father John Tacci Porcelli, a priest of the archdiocese of Fermo. He was born in the place commonly called Mugliano of the archdiocese of Fermo, from legitimate, Catholic, and honorable parents, and, having reached the thirty-second year of his age, he obtained the doctoral degrees in sacred theology and in both laws, and was enrolled among the students of the noble ecclesiastical academy of the City. The Cathedral Churches of Callian and Pergola are perpetually and canonically united, and are vacant, due to the translation of the Reverend Father John Baptist Scolti to the united Sees of Auxima and Cingulana, with the favor of the Reverend Joseph Maria Aldanesi, a priest of Corneto-Tarquinia. The Reverend Father Joseph Maria Aldanesi was born in Corneto Tarquinia, from legitimate, Catholic, and honorable parents, and having surpassed the fiftieth year of his age, he obtained the doctoral degrees in philosophy, sacred theology, and in both laws. He was a Canon Prebendary and until now Archdeacon of his Cathedral, having performed the duties of Pro-Vicar General, visitor, and pro-synodal examiner, and was co-opted among the supernumerary officials in the intimate chambers of His Holiness. The Cathedral Churches of Fabriano and Mathilica are perpetually and canonically united, and are vacant, due to the translation of the Most Reverend Macarius Sorini, Archbishop of Philippopolis, to the See of Eugubina, with the favor of the Reverend Father Aristides Golfieri, a priest of Imola. He was born in Imola, in the diocese of Imola, from legitimate, Catholic, and honorable parents, and having surpassed the fiftieth year of his age, he was examined as a pro-synodal examiner, and he had previously renounced the office of Canon Prebendary of the same Cathedral. The Cathedral Church of Rieti is vacant, due to the translation of the Reverend Father Charles Bertuzzi to the See of Foligno, with the favor of the Reverend Bonaventure Quintarelli, a priest of Balneoregium. He was born in Balneoregium, from legitimate, Catholic, and honorable parents, and

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having surpassed the fiftieth year of his age, he received the doctoral degree in philosophy, sacred theology, and in both laws, and was previously a Cathedral Canon and Rector of the seminary, where he gave lectures in philosophy, moral theology, and dogmatic theology. The Cathedral Church of Foroli is vacant, due to the promotion to the See of Bologna of the Eminent and Reverend Lord Dominic, with the title of Saint Onophrius, a Cardinal Priest of the Sacred Roman Church, Swampa, with the favor of the Reverend Raymond Iaffei, a priest of the archdiocese of Fermo. He was born from legitimate, Catholic, and honorable parents, and having surpassed the forty-eighth year of his age, he has served as an examiner pro-synodal on several occasions, and was elected a Canon in honor of the Collegiate Church of Saint Michael the Archangel, and until now he was the parish priest of Saints Cosmas and Damian, as well as of Saint Catherine in the city. The Cathedral Church of Tiburtina is vacant, due to the promotion to the See of Camerina, with the perpetual administration of the Church of Treia attached to it, of the Reverend Father Celestine del Frate, with the favor of the Reverend Father William Maria d'Ambrogi, a priest of Rome and of the Order of the Eremites of Saint Augustine. The Reverend Father William, in the secular world Marian d'Ambrogi, was born in Rome, from legitimate, Catholic, and honorable parents, and having surpassed the sixty-first year of his age, he performed the duties of a lecturer, pro-regent of his Order, master, and doctor in sacred theology, and in the word of God, preaching both in Rome and elsewhere, and was appointed parish priest and prior to the monastery of Saint Mary of the People, and also Rector of the Province of Rome. He is an adjunct consultant to the Holy Congregation of the Indies, and was defined as General Definitor by the General Chapter of his Order.

[*Latin ed. p. 518*]

518 From the Acts of the Consistory, he was chosen, and most recently appointed as an assistant to the Custodian of the Pontifical Sacristy. The Cathedral Church of Nursia is vacant, due to the promotion of Reverend Father Mariani Gavasci, of the Order of Friars Minor Capuchin of Saint Francis, to the Archiepiscopal Titular See of Scythopolis, with the favor of Reverend Father Francis Ranieri, of the Order of Reformed Friars Minor of Saint Francis. Reverend Father Francis, in the world Dominic Anthony Ranieri, was born of legitimate, Catholic, and honorable parents in the diocese of Tuderina, and having surpassed his fiftieth year, he has fulfilled the duties of Lecturer in the humanities, philosophy, dogmatic and moral theology, and also of Canon Law, and has been appointed Provincial Visitor three times, and also General Visitor of other Provinces of the Order. The Cathedral Church of Marsorum is vacant, due to the promotion of Reverend Father Henry de Dominicis to the See of Amalfi, with the favor of Reverend Father Angel Maria Aloysius, a priest of the Aquilana

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archdiocese. He was born of legitimate, Catholic, and honorable parents, and having surpassed his fifty-ninth year, he was previously appointed Pro-Synodal Examiner and later Synodal Examiner, and is the spiritual Moderator of all the monasteries of Aquila. The Cathedral Churches of Melphicten, Tuvenaco, and Terlitiaco are mutually and perpetually canonically united, and are vacant due to the death of the Very Reverend Father Paschal Corrado, the last of them to die outside the Roman Curia, with the favor of Reverend Father Paschal Picone, a priest of the Aversana diocese. He was born of legitimate, Catholic, and honorable parents in the town of Casalucis in the Aversana diocese, and having surpassed his fifty-ninth year, he has fulfilled the duties of Pro-Synodal Examiner and Moderator of the Congregation of the Clergy of Aversa, and is currently the Canon of the Chapter of Aversa and the General Pro-Vicar for spiritual matters of that diocese. The Cathedral Church of Saint Severus is vacant, due to the death of the Very Reverend Father Stanislaus of Lucca, the last of him to die outside the Roman Curia, with the favor of Reverend Father Bonaventure, in the world Anthony Gargiulo, of the Order of Friars Minor Capuchin, a priest of the Surrentina archdiocese. Reverend Father Bonaventure, formerly Anthony Gargiulo, was born of legitimate, Catholic, and honorable parents, and having reached his fifty-second year, he was chosen for the Apostolic Missions in England, in the diocese of Salopiensem, Shrewsbury, and has been appointed several times as an archdeacon, and also as Definitor of his monastic province of Naples, and has fulfilled the duties of Custodian of the Monastery of Saint Agnes, and has renounced the position of Founder and Companion of the humble Society of Saint Thomas in the ecclesiastical academy of Surrentina. The Cathedral Church of Salutiarum is vacant, due to the death of the Very Reverend Father Alphonsus Buglione a Monale, the last of him to die outside the Roman Curia, with the favor of Reverend Father Matthias, a Vicar, a priest of the Vercellensis archdiocese. He was born of legitimate, Catholic, and honorable parents in Fontaneto near the Po, and having surpassed his fortieth year, he received a doctoral degree in sacred theology, and was appointed Canon Theologus and Major Cantor of the Metropolitan Basilica of Vercelli, and also Professor of Sacred Scripture in that seminary, and in the Curia he was appointed Advocate Defender in matters of marriage and Pro-Synodal Examiner. The Cathedral Church of Mutari is vacant, due to the promotion of Reverend Father Paul, Charles Francis Origo, a priest of the Mediolanensis diocese, to the Patriarchal See of Venetia Emi and Remi, with the title of Saint Bernard at the Baths, S.R.E., and with the favor of Reverend Father Joseph Sarto, a Cardinal. He was born of legitimate, Catholic, and honorable parents in Milan, and having surpassed his forty-fourth year, he gave his name to the Congregation of Oblates, and was chosen as Prefect of that Congregation, and fulfilled the duties of Superior of the House of Saint Charles. The Cathedral Church of Sibenico is vacant, due to the death of the Very Reverend Father Anthony

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Innocent, Joseph Fosco, the last of him to die outside the Roman Curia, with the favor of Reverend Father Maltheus Zannoni, a priest of the Spalatensis diocese, by nomination of Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary, Apostolic King.

[*Latin ed. p. 519*]

FROM THE CONSISTORY ACTS §19: Tragurii, born in Spalato, in the diocese of Dalmatia, from legitimate, Catholic, and honorable parents, having surpassed his sixty-fourth year, recently awarded a doctorate in sacred theology, and formerly Archpriest of Tragurii—parish priest and abbot—has resigned. The Cathedral Church of Augsburg is vacant, due to the death of the Most Reverend Pancratius Dinkel, the last bishop of that diocese, who died outside of Rome, by the favor of the Reverend Father Peter Hoetzl, Provincial of the Order of Friars Minor Reform, of the Province of Bavaria, a priest of Munich in Bavaria, at the nomination of the Most Serene Regent of the Kingdom of Bavaria, by virtue of an Apostolic Indult. The Reverend Father Peter Hoetzl, in the world Aloysius, was born in the city of Munich in Bavaria, from legitimate, Catholic, and honorable parents, and having surpassed his fifty-eighth year, has, in various places, cared for souls, and in his Order has served as Definitor, Custos, and Provincial Minister of the Bavarian Province, once and again, and is presently Provincial Minister. The Cathedral Church of the True Cross, or Jalapen, in the Mexican territory of North America, is vacant, due to the death of the Most Reverend Ignatius Suarez Peredo, the last bishop of that diocese, who died outside of Rome, by the favor of the Reverend Doctor Joachim Arcadi Pagaza, a priest of the archdiocese of Mexico. He was born from legitimate, Catholic, and honorable parents, and having surpassed his fifty-sixth year, was awarded the degrees of Bachelor in philosophy and in both laws, has for fourteen years served as a parish priest, and is presently Secretary General of the Mexican Church, and Rector of the Seminary, having resigned. The titular episcopal Church of Zeugmaten, under the Metropolitan of Hierapolis, is vacant, by the favor of the Reverend Father Raphael Rossi, a priest of the archdiocese of Benevento, appointed as Coadjutor with succession to the Reverend Father Nicholas de Simone, Bishop of Bova. The Reverend Father Raphael Rossi was born from legitimate, Catholic, and honorable parents, and having surpassed his forty-fourth year, has obtained the doctoral degree in philosophy and theology, and the license in both laws, and for two decades has been General Vicar in spiritual matters for the archdiocese of Taranto, having resigned. The titular episcopal Church of Nilopolitan, under the Metropolitan of Oxyrynchus, is vacant, due to the succession to the See of Nusca of the Reverend Father Joseph Consenti of the Congregation of the Most Holy Redeemer, who was subsequently transferred to the See of Lucera, by the favor of the Reverend Doctor Theodosius Maria Gargiulo, a priest of the diocese of Lecce, and appointed as

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Coadjutor with succession to the Reverend Father Thomas Montefusco, Bishop of Uritani. The Reverend Doctor Theodosius Maria Gargiulo was born from legitimate, Catholic, and honorable parents in Lecce, and having surpassed his fiftieth year, has resigned as Notary Ecclesiastical for the causes of the Servants of God, and as Canon of the Cathedral Church. The titular episcopal Church of Samosaten, under the Metropolitan of Hierapolis, is vacant, due to the death of the Most Reverend Isidore Francis Joseph Colombert, the last bishop of that diocese, who died outside of Rome, by the favor of the Reverend Father Henry Grazioli, a priest of the archdiocese of Ferrara, appointed as Auxiliary Bishop to the Most Reverend and Venerable Lord Giles, titular of Saint Bartholomew in the Island, Cardinal Maur Ferrariensis, Archbishop. The Reverend Father Henry Grazioli was born in Bologna, from legitimate, Catholic, and honorable parents, and has resigned as Canon of the metropolitan Church of Ferrara, and formerly as Prefect, having served as Vicar Capitular while the See was vacant, and is presently serving as Pro-Vicar General. The titular Church of Daulien, under the Metropolitan of Athens, is vacant, due to the promotion of the Reverend Father Anthony Buglione to the titular archiepiscopal Church of Caesarea of Pontus, and to the coadjutor Sees of Compsana and Campania, by the favor of the Reverend Father Americus Cialente, a priest of the archdiocese of Aquila. He was born from legitimate, Catholic, and honorable parents, and having surpassed his sixty-first year, was recently awarded a doctorate in canon law, and previously served as Pro-Synodal, Synodal, and as Curator, Vicar of the Aquila Cathedral, and has resigned as Canon Penitentiary.

[*Latin ed. p. 520*]

FROM THE CONSISTORY ACTS: The Metropolitan Church of Port-au-Prince, in the Haitian territory of Central America, is vacant, due to the death of the Most Reverend Constant Mauritius Hylion, the last Archbishop of that See, who died outside of Rome, with the favor of the Most Reverend Father Dominic Tonti, Archbishop of Sardinia, Apostolic Delegate and Extraordinary Legate to the Republics of Saint Dominic, Haiti, and Venezuela. The titular Archiepiscopal Church of Caesarea Ponti is vacant, due to the assignment of the title to the Most Reverend and Most Illustrious Joseph Mary Granello, a Cardinal Priest of the Roman See, with the favor of the Most Reverend Father Anthony Buglione, Bishop of Daulia, appointed as Coadjutor, with future succession, to the Most Reverend Salvatore Nappi, Archbishop of Compagna and Administrator of Campania. The Cathedral Church of Cracow is vacant, due to the death of the Venerable Albino Dunajewski, a Cardinal Priest of the Roman See, who, while living, was the last Bishop of that See, and who died outside of Rome, with the favor of the Most Reverend Father John Kniaz de Kolzielsko Puzyna, titular Bishop of Memphis. The titular Episcopal

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Church of Zamen, under the Archbishop of Carthage, is vacant, due to the death of the Most Reverend Frederick Mascarelli, the last Bishop of that See, who died outside of Rome, with the favor of the Most Reverend Albini-Angel Pardini, of the Order of the Regular Canons of Saint Peter ad Vincula, and former Bishop of Fulginata. The Church of Cuemavaca, in the territory of Mexico in North America, which, by His Apostolic Letters dated July 9, 1891, was separated from the Archdiocese of Mexico and elevated to the status of a Cathedral, is vacant from its original erection, with the favor of the Reverend Fortini Hippolyti Vera, a priest of the Archdiocese of Mexico. He was born of legitimate, Catholic, and honest parents in the place commonly called Tequisquiac, in the Archdiocese of Mexico, and, having reached the sixtieth year of his age, he once served as a parish priest in Amecameca, and is currently a canon of the Collegiate Church of Guadalupe, having renounced that position. The Cathedral Church of the Most Holy Assumption in Paraguay, in South America, is vacant, due to the death of the Most Reverend Peter John Aponte, the last Bishop of that See, who died outside of Rome, with the favor of the Reverend Symphoriani Bogarin, a priest of the Diocese of the Most Holy Assumption of Paraguay. He was born of legitimate, Catholic, and honest parents in the Diocese of the Most Holy Assumption of Paraguay, and, being in his thirty-second year of age, was chosen by the episcopal curia as a secretary, and has served as Rector of the Cathedral Church, and is currently serving as a parish priest in the Cathedral of Paraguay. The titular Episcopal Church of Cumen or Cymen is certainly vacant, with the favor of the Most Reverend Father Charles Quaroni. He was born of legitimate, Catholic, and honest parents in Rome, and, having reached the sixty-second year of his age, was appointed among the Apostolic Protonotaries of His Holiness, and has recently renounced his position as a canon of the Patriarchal Basilica of Saint Liberius. The titular Episcopal Church of Apollonia is vacant, under the Archbishop of Thessalonica, due to the translation to the See of Xylopolitan, Boise City, of the Most Reverend Alphonse Glorieux, with the favor of the Reverend Father Francis of the Order of the Friars Minor Capuchin of Saint Francis. The Reverend Father Francis, formerly Aloysius Dominic Cenci, was born of legitimate, Catholic, and honest parents in Laureto, and, having surpassed his fifty-fifth year of age, was chosen as a Doctor of philosophy and sacred theology, and has served as a lecturer, consultant, and definitor general in his order, and has been appointed as a consultant to the Congregation of Sacred Rites, and as an Apostolic Preacher, and has renounced these positions. The titular Episcopal Church of Eudocia is vacant, under the Archbishop of Pessinuntio, due to the death of the Most Reverend Aemilius Joseph Pourbaix, the last Bishop of that See, who died outside of Rome, with the favor of the Reverend Peter Anthony Antivari, a priest of the Archdiocese

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of Udine. He was born of legitimate, Catholic, and honest parents, and

[*Latin ed. p. 521*]

Having surpassed the sixty-fourth year of his age, he, acting as Rector of the seminary of Udine, a Canon of that Chapter, among the counselors associated with the discipline for the clergy, and an Examiner pro-Synodal, was appointed. To the titular church of Tolimen, with the honorary title of Cathedral, and vacant since its new erection, the Reverend Stephen Rojas, a priest of the diocese of Popayán, was appointed. He was born of legitimate, Catholic, and honorable parents in the town of the territory of Tolimen and the diocese of Popayán, and having surpassed the thirtieth year of his age, he was joined to the students of the College of the Pious Latin American Society, and has been administering souls in several towns of the territory of Tolimen, and is currently the parish priest and vicarious forane in the town called Timaná, having been relieved of his duties by the Bishop of Popayán. To the titular episcopal church of Colonien, vacant under the Archbishop of Sebastian, the Reverend James Costamagna of the Salesian Congregation, a priest of the archdiocese of Turin, was appointed. He was born of legitimate, Catholic, and honorable parents in a place of the archdiocese of Turin, and having reached his fiftieth year, he has long been devoted to the Salesian Congregation, having been granted a license in sacred theology by the University of Turin, and has fulfilled the duties of Provincial Minister of his Congregation. Most recently, he was relieved of his duties as Apostolic Vicar for the region of Méndez and Qualaquiza in the Equatorial Republic. Then, Our Holy Lord announced the following prelates promoted by his letters in the form of a Brief: Archbishops: of Port-au-Prince, Julius Tonti; of Amida, Francis Sogaro; of Caesarea, Anthony Buglione; of Adelaide, John O'Reilly; of Saint Boniface, Aloysius Philip Adelard Langevin. Bishops: of Trapezopolis, Bartholomew Woodlock; of Cracow, John Kniaz de Kolzielsko Puzyna; of St. John's, Newfoundland, Michael Francis Howley; of Zam, Albin Angel Pardini; of Cuernavaca, Fortin Hippolyte Vera; of Belém de Para, Anthony Emmanuel Castilho Brandao; of the Most Holy Assumption of Paraguay, Symphorian Bogarin; of Cum, Charles Quaroni; of Apollonia, Francis Cenci; of Eudocia, Peter Anthony Antivari; of Elphin, John Clancy; of Clazomen, Aloysius Piazzoli; of Tei, Henry Hanlon; of Zarait, Stephen Sánchez de las Heras; of Tabra, Anthony Guillermain; of Arcadiopolis, Theophilus Mayer; of Gaza, Henry Van de Wetering; of Amastris, Anthony Mary Roveggio; of Hamatha, Stephen Sylvan Iongla; of Caesarea Philippi, George Macaire.

[*Latin ed. p. 522*]

522 FROM THE HOLY CONGREGATION OF THE COUNCIL OF GNESEN, AND POSNANIA, CONCERNING MARRIAGE, dated July 23, 1892, and September 1, 1894. Session 24, chapter 9, On reforms in marriage. Mar-

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tin, aged 28, entered into a marriage according to the Catholic rite on February 4, 1884, with a girl named Marianna, aged 17, in the parish church of the archdiocese of Gnesen; but, with a most unfortunate omen, it appears that Marianna, already addicted to another lover, was compelled to celebrate the marriage with Martin only through fear instilled by her own father. Indeed, Marianna herself, in a distressing letter given to the archiepiscopal curia of Gnesen on April 21, 1888, states: "I was forced into this marriage by my father, who threatened to kill me if I did not marry Martin. In fact, my father intended to pierce me with a sword when I rejected this marriage... As a girl of 17, I did indeed enter into marriage, but nevertheless, against my will and with an invincible aversion towards Martin, because of threats and for the sake of my life's security." And she gives the following reason for this coercion and the fear instilled: "My father, who owed two hundred thalers to Annae Wyngriska in Rubin, was entirely intent on preventing the auction of his property, which had already been decreed by a civil court, by obtaining assistance with money from Martin." Marianna's father also testified under oath: "I confess that I forced my daughter Marianna to marry Martin. This marriage seemed opportune to me, because with this money, I averted the sale under the hammer of my house... and I confess that, had I not threatened her, she would not have entered into the marriage." SUMMARY OF THE FACTS.

[*Latin ed. p. 523*]

GNESEN. AND POSNANIA. 523 Furthermore, four witnesses, under oath, confirm this matter, more or less. After the marriage, Marianna persisted in her aversion towards her husband, Martin. Under the pretext of needing a few more days to stay at her father's house, she especially refused to go to her husband's house, which was located in a nearby village. When Martin came on February 11th to bring his wife, she still refused to go, adding: "Let my father go, since he is the one who forced me into this marriage." However, the following day, compelled by her father, she went with her husband, but without abandoning the aforementioned aversion. For the husband testified under oath: "On February 12th, I attempted to fulfill the marital duty, but my wife excused herself with an illness. On February 13th, I tried again, but the union was not completed, because she resisted... I completed the carnal union with her three times during the entire period of our cohabitation, including the two attempts mentioned above." This entire period of cohabitation lasted only until March 3rd of the following year, when Marianna abandoned her husband and returned to her father's house, swearing, according to the testimony of Catherine Neuman, "that she could not live with Martin, that she could not bear him, that he smelled bad, that she was 'submerged in shame,' and that she would not return." However, the father, who had already received the expected money from Martin, ceased to pressure his daughter to re-

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turn. Soon after, the unfortunate woman, leading a dissolute life, entered into relationships with several men, and on December 23rd of the year 1885, gave birth to a son, whom Martin steadfastly asserted was conceived through adultery with Marianna, because from March 3rd, 1884, all marital relations had ceased. The matter eventually reached the point where Martin, due to Marianna's adultery, and not due to force, fear, or lack of consummation, sought the dissolution of his marriage in the civil court. Consequently, in accordance with the civil laws of that region, he appealed to the archiepiscopal court of Gnesen, requesting...

[*Latin ed. p. 524*]

524 GNESEN. AND POSNANIA. He sought to have the marriage bond dissolved, whether because the marriage remained only valid, or because of the violence and fear suffered by Marianna. And since the aforementioned tribunal was reluctant to accept such a petition, – because the dissolution of a valid but unconsummated marriage pertains to the tribunal of the Supreme Pontiff, and the action of accusing the marriage on the grounds of violence and fear does not belong to anyone but the one who suffered the violence and fear, – Martin appealed to the Most Holy Prince, and obtained that the proceedings be carried out in the Gnesen tribunal, both regarding the asserted ground of nullity, and regarding the asserted lack of consummation of the marriage. It should be noted that, while Martin was pressing before the Holy See for the granting of the aforementioned grace, Marianna presented a petition to the Gnesen tribunal on April 21, 1888, also requesting the dissolution of the marriage on the grounds of violence and fear; and it is unknown what response was given to this petition by the aforementioned tribunal. In the meantime, having scarcely received the Most Holy mandate, the tribunal arranged for the proceedings to be carried out, hearing the witnesses mentioned above, and also Martin himself, who repeats almost the same things as related above. However, in order to hear Marianna, who resides in the Grand Duchy of Mecklenburg, and who, although summoned, did not appear before the ecclesiastical tribunal, a civil judge was delegated by the tribunal to that place; and before him, Marianna made the following deposition: "For about four weeks, I lived with my husband Martin, who, in truth, during that time, consummated the marriage with me. The letters presented to me on April 21, 1888, in the German language, and which I read, were written at my request by the scribe Degorsk in the village of Wagrourec de Prochnowo, where I was employed at that time, and I submit them to the ecclesiastical tribunal. Whatever is contained in the letters corresponds to the truth, and I repeat the requests contained therein. If it is necessary, as the plaintiff against Martin, I ask that the witnesses whom I have cited be heard, for the purpose that, on the grounds of violence and fear, and lack of consent, the marriage

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may also be declared null by the ecclesiastical authority."

[*Latin ed. p. 525*]

GNESEN AND POSNANIA. A SYNOPTIC DISCUSSION. OPINION OF A THEOLOGIAN. After noting many things concerning the process of instruction, he said: that if one were to inquire about the merits of this case, the entire discussion seems to be contained within two questions or doubts: I. Did the Gnesen court rightly suspend further inquiry into the reasons for granting a dispensation concerning a valid and unconsummated marriage in this case? II. Does it clearly and certainly appear, based on the alleged and proven facts in this case, that there is a nullity of the marriage due to the head of fear, unjustly imposed and relatively grave? It seems that the following answers should be given to these two questions: To I. Affirmative. To II. Negative, until the judicial acts are either supplemented or rectified. 1. A brief and easy reason seems to be given for the answer proposed to the first doubt. For it is clear from the confessions of both spouses, Martin and Mariannae, that their marriage was truly consummated. And therefore, it seems legitimate to conclude that the Gnesen court rightly suspended further inquiry into the reasons for granting a dispensation concerning a valid marriage. For, with certain proof of the consummation of the marriage, the dissolution of the marriage is impossible by divine law; therefore, the praised court would have wasted oil and effort, and beaten the air, through further inquiry; but no one is obligated to perform useless acts by papal decree. The same conclusion holds, even if someone were to believe, not with full certainty, but only with great probability, that the consummation of the marriage was demonstrated. For the Apostolic See does not usually grant, nor can it legitimately grant, a dispensation where there is a near danger of violating divine law, unless a certain and true doubt of law or fact is previously resolved. What remains is to prove the answer to the second and principal doubt with suitable arguments. As for what the law is in this matter,

[*Latin ed. p. 526*]

526. GNESNEN and POSNANIEN require further explanation. For, it has been established in law that a marriage contracted under duress and fear is invalid, if 1. that fear is, at least relatively, grave and is imposed externally, unjustly, and directly to extort the marriage, and 2. if, subsequently, there is no prior dissent, and the fear has ceased, to a legitimate marital agreement. Cf. chap. 14, 28, 21. X on betrothal. IV, 1; Feije, De imp. et disp. matr. n. 128 sq. 143. Therefore, the entire discussion is reduced to this: whether, in this case, the facts correspond to the requirements of the law. For, "marriage is, by its very nature, a solemn and public act, which should always be considered valid, unless evident reasons demonstrate its nullity." Thus, S. Cinq. § 39, and S. C. de Prop. F. § 40, cited in the aforementioned

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instructions, a. 1883. Are there, in this case, evident reasons by which the nullity of the marriage can be proven? This evident proof can only be obtained from the testimonies of witnesses, which are found in the records. But these witnesses are, above all, very few in number. For, among the witnesses, who are distinguished from the plaintiff and defendant, there is only the father of the plaintiff, then a certain man of lower condition who speaks a few words, then a written testimony of the Prosecutor, and finally three women, of whom two are widows. This small number should all the more be urged in favor of the validity of the marriage, especially since two witnesses, with eloquent words, have praised the marriage, as required by the Instructions of the S. C. Inquis. and S. C. de Prop. F., and also expressly by the Defender of the marriage. Moreover, the mother of the plaintiff and the parish priest have not been cited and examined. V.g. § 39, cited in the aforementioned Instructions of the S. C. de Prop. F., reads: "To ascertain the aforementioned (i.e., the fear), both spouses and their parents should be summoned to the trial, especially those who are accused of having used coercion... After these, a parish priest or another priest who attended the marriage should be summoned." If the number of witnesses is not sufficient, the same applies to the proof of their credibility and trustworthiness, since from the aforementioned clause, it only appears that the witnesses were "not pu-"

[*Latin ed. p. 527*]

GNESNEN and POSNANIEN. 527 "nitae". This clause does not satisfy the requirements in ecclesiastical law; hence, see § 39, where the ecclesiastical judge is ordered by the Sacred Congregation of the Holy Office: "He must ensure that he obtains testimony from the parish priests regarding the probity and trustworthiness of the individuals involved." Such attestations, which are found in the records of other matrimonial cases, cf. Acta S. Sed. vol. XXII p. 86, are not present in this case. Who this Quaestor is, does not appear from the records, since, as is customary for magistrates, he affixed his name to the written attestation in such a way that it cannot be read; furthermore, whether he is a Catholic man of good standing, or perhaps a Hebrew or a Protestant, is not entirely clear from the records. It remains to be investigated whether the depositions actually fully prove the fear described above. "Furthermore, the gravity of the fear arises from the nature of the threats, from the quality of both those who make them, and those who are said to have suffered them. Therefore, these three things must be especially investigated." In addition to this norm established by the Sacred Congregation of the Holy Office in the aforementioned Instruction, § 36, in order to establish a serious fear, according to § 38 of the same Instruction, the circumstances that precede, accompany, and follow the marriage must be considered. Given these two norms, it seems that there is hardly any doubt that a certain coercion indeed occurred through the

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father of Marianna. Indeed, the father of Marianna, under oath and in a proper form, confesses before the ecclesiastical judge that he forced his daughter into marriage, and all the witnesses agree on this matter; moreover, a certain public notoriety exists regarding this matter, as is evident from the attestation of the Quaestor. Therefore, only the question remains as to whether this fear was serious. If only the deposition and confession of the father are considered, the matter is not without difficulty. "I confess," he says, "that I forced my daughter, Marianna, into marriage with Martin. This marriage seemed opportune to me, because I had relinquished the sale of property with Asti, which was located near my home. I probably threatened her with beatings, but I do not remember threatening her myself..."

[*Latin ed. p. 528*]

528 GNĖSNEN. AND PÓSNANIEN. having struck... I confess that, unless I had been threatened, I would not have entered into that marriage... I do not remember whether I brandished a sword above her, but I certainly know that I did not strike her with a sword." These words, uttered by Mineo, certainly do not clearly contain the gravity of the threat. Indeed, blows or threats of blows are undoubtedly a serious cause of fear; but "probable" threats of blows or blows themselves, as anyone can recall, the brandishing of a sword, which she does not remember, are not certain evidence of the object of serious fear. Furthermore, the circumstance that Marianna would not have entered into that marriage without threats, proves the existence of threats, but not their severity; for if someone is compelled to do something by mild threats, they would have refrained from doing it even if the threat had not been made. Therefore, in order to elicit from the testimony of Marianna's father proof of serious fear arising from the nature of the threats, only a certain manner of speaking remains, according to which the compulsion is stated so absolutely that it denotes coercion by serious violence, not by slight fear. Hence, other witnesses must be consulted, in order to have greater certainty about the nature of the threats. In this matter, the testimony of Catherine Neumann is certainly significant: "Before the marriage, she told me, that is, Marianna, that her father had threatened her with blows." Or, if Emilia Rhode declares in the records: "She also told Marianna that her father had threatened her not only with blows and expulsion from the house, but had also, in fact, struck her. She did not perceive with her own eyes that he struck her, but only heard him threaten her that, unless she married Martin, he would whip her and expel her from the house." Indeed, threats of blows, blows, and the threat of expulsion from the house constitute a serious imposition of force by the very nature and substance of the threats. Cf. cited Instr. S. C. de Prop. F. § 37; "Expulsion from the paternal home... blows" are given as examples. However, in the present case, those two women did not see those blows, nor did they hear those threats of the father of Marianna with their own ears, but they perceived

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the whole matter from Marianna herself; therefore, this double testimony.

[*Latin ed. p. 529*]

GNESNEN and POSNANIEN, 529, reduce the matter to the assertion of a single individual, Mariana, who is an actress, not a witness, in the case; moreover, she is a woman of loose morals and immodest conduct, and is, at the very least, suspected of various falsehoods in this case. Thus, for example, Mariana asserts that various carnal relations occurred between herself and Martin, from which a son was born; on the contrary, Martin, with the best of reason, asserts and maintains that the son was born from an adulterous union. Finally, Mariana, in her depositions before the civil judge, does not mention the beatings she received from her father, although she speaks of threats of murder and even adds that her father intended to kill her with a sword. However, from Mariana's words, it is not clear whether the father merely threatened her with words, saying that he wanted to kill her with a sword, or whether, in order to instill terror, he actually brandished the sword over her. The Quaestor also, in his testimony, asserts, based on information received, that the father of Mariana did not inflict beatings, but only used persuasion. Hence, the beatings actually inflicted, based on the threats mentioned, appear to be entirely excluded. The threat of murder and the brandishing of the sword, and the threats of bodily harm, certainly constituted a grave fear; but with regard to the two former assertions, it is only from the confession of the actress, made outside of court, that they are known, and in view of the woman's known perversity, full faith cannot be placed in her testimony in an ecclesiastical court. The third assertion, however, rests on the testimony of the Quaestor, which is not fully proven in the ecclesiastical court, if only consideration is given to what has already been explained above regarding the *forma* of the proceedings. Furthermore, in the Quaestor's testimony, there are words that make a certain fact probable. Therefore, of all the witnesses, only two remain, whose depositions concern the nature of the threats. Mariana cites Catherine Koralewska in her favor, who, before the ecclesiastical judge, in a legitimate manner, testified: "Mariana used to visit my daughters before her marriage and told them that she would be married, because Martin... desired to marry her; but she did not want to marry him, because she did not like him. Therefore, I went to her father, and I told him not to give his daughter to that man, because..."

[*Latin ed. p. 530*]

530. I have explained that the monks of Gnesen and Poznań were attempting to force the matter. He replied to me: "What does this harlot think of such a man? Does she want us to abandon this matter? If she does not marry him, I will kill her!" Afterwards, he knows nothing of other threats made, nor has he heard anything about her being threatened with death or

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similar things. "To explain this to her father, I went to see him, compelled by the prayers of Marianna." Thus far, the account. Certainly, those words: "If she does not marry him, I will kill her," declare a grave evil within themselves; moreover, Catherine Koralewska heard these words with her own ears, and did not understand them through the account of others. Nevertheless, even against this testimony, a significant difficulty remains. For grave threats to be truly grave and to inspire great fear, it is not enough to utter threatening words before other people, but they must be addressed to the person who is subjected to the coercion; but in this case, the father uttered those words before Catherine Koralewska, and not before Marianna herself. The last hope for certain direct testimony regarding the gravity of the threats, based on their quality and nature, rests with Andrew Relis, who, besides the Quaestor, is cited by Martin alone with these words: "This coercion was grave, because, according to the testimony of Andrew Relis... the father of Marianna, that is, Valentinus, brandished a sword over her head, and threatened to kill her if she did not consent to marry me." But what did Andrew Relis testify before the ecclesiastical judge in a canonical manner? "I know," he said, "that Valentinus was attempting to force his daughter, Marianna, into marriage with Martin. Before me, he swore that he would kill her, either with a sword or with a pistol. In my opinion, he was prepared to carry out those threats." These words of Andrew Relis do not fully refute Martin's assertion. Indeed, Andrew says that he knows that Valentinus was attempting to coerce Marianna. But whether this knowledge is true knowledge, based on certain causes, his own sight or hearing, or whether it is merely a subjective persuasion based on probable arguments, the account of others, public reputation, the witness does not clearly manifest; and it is truly astonishing.

[*Latin ed. p. 531*]

GNESEN AND POSNANIA. 53i. The ecclesiastical judge of the Gnesen court did not question the witness regarding the basis of his knowledge! Furthermore, as I have already noted, the word "cogendi" used simply can signify serious coercion and fear, but without other additions, it certainly and necessarily does not have that meaning. If Andrew derived his "knowledge" from the words that Valentinus presented before him, that knowledge cannot be said to be certain; it rests on a syllogism, in which the premises only admit of a more or less probable conclusion. For, it does not necessarily follow that because those threats were made by Valentinus before Andrew, that they were also personally directed against Marianna. Finally, it must be noted the obvious contradiction between the assertion of Martin and the testimony of Andrew. For Martin stated: "Because, according to the testimony of Andrew Rélis... her father was brandishing a sword over her head and threatening to shoot her." But Andrew testifies only: "Before me, he affirmed under oath that he would kill her with a gun or

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sword." Therefore, regarding the brandishing of a sword over Marianna's head, as Martin suggests, Andrew states that he saw nothing, nor does he say that he heard those threats personally addressed to Marianna, but rather before him. Therefore, even from this testimony, the seriousness of the threats is not proven with certain and conclusive arguments. The time has come to inquire into that second circumstance, by which, according to the cited Instruction of the Sacred Congregation for the Propagation of the Faith, § 36, the gravity of fear is determined "from the nature of those from whom those [threats] originate, as well as of those who are said to have suffered them." In this matter, it is hardly possible to deny that, rather, it should be judged to be of great gravity. For the threats originated from Marianna's own father, and at a time when she was not yet emancipated from his parental authority; for at the time of her marriage to Martin, she was approximately seventeen years old. Although that age is sufficient under German law for the celebration of marriage, it is not sufficient for complete emancipation from parental authority. Furthermore, according to the depositions of Catherine Neumann, Marianna's father is "a man of fiery temperament," although it is added that...

[*Latin ed. p. 532*]

532 GNESNEN and POSNANIEN. The records state: "I do not know whether he was fit to inflict such a grave injury upon his child." Furthermore, while Andreas Relis confesses: "According to my opinion, he was prepared to carry out threats," Emilia Rhode testifies: "As for Valentinus, I do not believe he was prepared to inflict a grave injury upon his child." Nevertheless, at least from these testimonies, it is clear that Valentinus possessed a fiery temperament, which is further confirmed by his furious manner of speaking before others, for example, to Catharina Koralewska: "What does this harlot think of such a man? Does she want us to leave without an inheritance? If she does not marry him, I will kill her," and Andreas Relis testifies: "Before me, he declared that he would kill her with a pistol or a sword." These words clearly reveal a man of an intemperate and irascible nature, for a father does not usually speak to his own child in such a way before others. Finally, we must consider the reason why Valentinus forced his daughter to marry Martino. For, as Valentinus himself confesses: "This marriage seemed opportune to me, because with the money of this man (i.e., Martino), I saved the sale of my house from being held at Asti." That this hope of Valentinus was not in vain is evident from the testimony of Martino himself: "The remaining debt was paid to the father of my wife." If one considers this desperate situation of Valentinus and how people suffer when they are evicted from their own home and it is put up for auction, it is easy to understand that the father intended to leave nothing undone to prevent such a great evil from befalling his daughter through marriage, and his anger could have been further aroused

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by the knowledge of Marianna's dissolute behavior, and how much a stable marriage would be beneficial to her. The marriage offered to his daughter could have been celebrated with a young man of good character and with sufficient temporal possessions, whom many women of her condition, like Marianna, would gladly accept. This coercion by the father was all the more dangerous and vehement because it could be concealed under the guise of a just indignation. If a third condition is examined, concerning the character of the person to whom the force was applied, it is also more likely to be for the sake of the gravity of the fear instilled.

[*Latin ed. p. 533*]

GNESNEN and POSNANIEN, 533, seem to be the relevant sections. Indeed, we are not dealing with a man of a certain age, nor with a young man, but with a girl of seventeen years. Furthermore, although Marianna is described by Emilia Rhode as a girl who "was not of a timid disposition, but rather showed a sufficiently harsh nature," she could not easily avoid the evils that threatened her; for if her resistance had completely prevented the marriage with Martin, she would have faced the perpetual indignation of her parents, sisters, and brother. If, after this, she had been forced to leave the house of her parents, she could not have avoided all these inconveniences by leaving her home and investing her resources in a distant region. She could not go into service outside the home, because her father would not have allowed it! Therefore, if we consider the persons involved and their feelings of fear in this case, it seems that judgment should be made according to the severity of the fear. The remaining point is that the actions alleged in the records, with regard to the severity of the fear, should be examined according to the other criterion mentioned above from the Instruction of the Sacred Congregation of the Inquisition and the Sacred Congregation of Propaganda Fide, namely: "the circumstances that precede, accompany, and follow the marriage must be considered." And indeed, Marianna's father frankly confesses in the records: "Until the day of the wedding, he showed boredom towards this marriage, and I confess that, unless I had threatened her, she would not have entered into it." Marianna also manifested her aversion to the marriage with Martin to other people even before the wedding, and these people testify to this fact in the records, for example, Catherine Koralewska; and Catherine Neumann testifies: "I knew Marianna better when I was preparing her wedding things. She argued with me, saying that her parents were forcing her into a marriage with Martin, whom she disliked very much. On the day of the wedding, when everything was prepared for the wedding, she cried out, lamented, cursed, and reviled her parents for forcing her into this marriage." Emilia

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Rhode has also been called to testify.

[*Latin ed. p. 534*]

534. GNESNEN and POSNANIEN. Marianna, in the records, testifies: "She knows that Marianna, with whom she was intimately acquainted and frequently met, refused to marry Martin, and that she herself heard Marianna express horror towards him." Martin himself speaks of the circumstances of his marriage in the records as follows: "On February 11th, I went to fetch my bride, who did indeed get into the carriage, but immediately fled from the carriage back home, because her father, fearing that he would not receive the remaining dowry, was urging her to leave. At that time, she said: 'Let my father go, for he is forcing me into this marriage.'" Andrew Relis, who is the only witness called by Martin in his favor, has not testified definitively about these circumstances of the marriage. These are the facts concerning the matter; the norms of law for judging such events are provided in § 36 of the esteemed Instruction of the Sacred Congregation for the Propagation of the Faith and the Sacred Congregation for Inquiries, dated 1883: "It must also be investigated what this person did to free herself from the coercion of her parents, whether she offered prayers, whether she used the help of others to dissuade her parents, whether and how she expressed her own aversion and opposition to the marriage. It must be considered whether, when the marriage contract was to be signed, she freely and without any protestation performed this act... how she behaved, whether when the preparations necessary for the marriage were being made, or when she was being urged to give her consent, or after giving her consent when the wedding feast was being celebrated, whether in all these circumstances she was cheerful, prompt, and joyful, or reluctant. It must also be considered her conduct towards the other party and towards his family, whether she was benevolent and affectionate, etc." These words of the Sacred Congregation, if applied to the facts alleged above, seem clearly to confirm that Marianna did not truly give her free consent to the marriage with Martin. Therefore, considering all the circumstances before the wedding and on the day of the wedding, and those that followed, it seems legitimate and certain to conclude that Marianna, in the very act of the celebration,

[*Latin ed. p. 535*]

GNESNEN. AND POSNANIEN. 535 marriages lacked the free consent, which is required by canon law for the validity of the marriage bond, due to coercion and fear, and therefore the marriages themselves were null and void. However, this conclusion is not yet definitive; the other question mentioned above must be resolved, namely, whether, perhaps later, the marriage of Marianna and Martin was legitimately validated after the fear had been removed. Martin did not, in any way or with any sign, manifest an intention of withdrawing from that marriage. And therefore, the entire

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question is reduced to this: whether Marianna, through a renewal of consent, legitimately validated her marriage or not. This seems to be something that must be denied. For Marianna, who was a girl of seventeen years at the time of the marriage, did not seem to have sufficiently understood the nullity of her marriage. She was, in fact, a naive person, not sufficiently instructed in religious matters, and given to a life of lust, who could easily have ignored this impediment. This ignorance is greatly confirmed if one considers that Marianna later seized every opportunity to challenge her marriage, when the hope and possibility of the dissolution of the marriage also appeared in the ecclesiastical forum. Furthermore, no effective argument can be derived from the carnal union, even if it occurred once; for as Martin confesses, he once excused himself from fulfilling his duty due to weakness, but the second time he recovered, so that the union was not perfect; the third time, a true union seems to have occurred; yet, each spouse simply states that the marriage was consummated; but, considering Marianna's lascivious nature, marital affection is by no means certainly proven, and even more so if the subsequent events are considered; for Marianna fled from her husband's home and threatened that she would rather drown herself than return to her husband. Finally, even if the alleged intention were not proven, there remains that very serious argument, which in the case of con-

[*Latin ed. p. 536*]

536 GNESEN and POSNANIA. The dispensation was not granted in the substantial form by the Council of Trent, chapter. Although prescribed. For certainly, in this region, concerning which we speak, for marriages between Catholics, it is entirely necessary to observe [the law]; moreover, in this case, the impediment of force and fear was not at all hidden, but public. Feije, book 1, chapter n. 90, adhering to the teaching of Benedict XIV concerning public or hidden impediments, states: "It is left to the judgment of the prudent [judge]; however, there are aids by which this judgment can be easily guided, and the solution depends greatly on the circumstances of the place and the persons involved. With regard to the place, it is not sufficient for the impediment to remain hidden from the majority of the inhabitants. However, it is considered hidden if it is known to five or six people in a town, or seven or eight in a city, provided that it has not been divulged by them." But in this case, we are not dealing with a city, but with a town; furthermore, the force and fear were particularly known to several daughters of Catherine Koralewska, to whom Marianna recounted about that very marriage; Catherine Koralewska herself, Andrew Relis, Catherine Neumann, Emilia Rhode, and three other women were present at that clamorous scene on the day of the wedding, when Marianna cried out and condemned the parents, and refused to go to the wedding. If such a thing, known to so many talkative women, had remained hidden, it is

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quite unbelievable to suppose. These facts certainly constitute not a hidden matter, but a public and notorious one. Therefore, the form of Trent was necessarily to be observed in validating the marriage. Since this was not done, the marriage, being invalid from the beginning, has not been restored to validity. OPINION OF A CANONIST. On February 4, 1884, a marriage was celebrated in the church in Wagrowiec, in the Archdiocese of Gnesen, between Martin, 28 years old, and Marianna, 17 years old. But this bond did not unite the souls of the spouses. Already on May 1, 1886, Martin obtained a civil divorce, and on May 13, 1887, he petitioned the Archdiocesan Consistory to declare his marriage invalid, and on December 31, he submitted a petition.

[*Latin ed. p. 537*]

In the years 1837, to the Archbishop of Gnesen and Posen, a petition was presented, requesting a declaration of nullity of a marriage, due to a lack of consent, which had been given by Marianna under duress and through fear, and also due to the incompatibility of the marriage. Marianna, in her own petition, did not mention the incompatibility, but stated: "Although I entered into marriage at the age of seventeen, I did so against my will and with an invincible aversion to Martin, due to threats and for the sake of my life. By a civil court decree of May 1, 1886, I was separated from Martin, and there is nothing to prevent me from entering into a civil marriage before a civil magistrate. However, as a Catholic, I wish to be joined in marriage only in the Church, with the sacramental bond." With these things as a preface, the consultant added something regarding the history of this marriage. To Marianna's father, who was poor and faced with the imminent sale of his house at Asti, it seemed opportune to marry his daughter to Martin, whose wealth he hoped would save his family. However, Marianna, who greatly detested Martin, did not want to marry him, and her father, "a man of fiery temperament," forced her into this marriage. He later confessed, "that he had forced his daughter," and added, "that he believed she would not have entered into this marriage otherwise." Before his family, "he swore that he would kill her with a rifle or sword." "According to my opinion," says the witness, "he was prepared to carry out his threats." "I spoke to Marianna's father," testifies Catherine Koralewska, "and I begged him not to force the girl into marriage; he replied to me: 'What does this harlot see in such a man? Does she want us to leave here without an inheritance? If she does not marry him, I will kill her!'" Marianna, before the marriage, reported that her father had threatened her with beatings and expulsion from the house, and that he had, in fact, beaten her, which, when later questioned about this, the father did not deny.

[*Latin ed. p. 538*]

538. FROM GNESNEN AND POSNANIEN. "While preparations were

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being made for the wedding in the Mariannae Islands, she always showed herself to be discontented and resentful, complaining that her parents were forcing her to marry Martin, whom she detested; and that this marriage, since Martin possessed wealth, would be very necessary for her father. On the day of the wedding, when everything was already prepared for the ceremony, she cried out (and cursed), reviling her parents for forcing her into this marriage, and declared that she would not marry Martin, because she felt an abomination towards him; and we three women, the witness added, swore to her that she would not cause any scandal, and her mother, weeping, begged her to attend the wedding." "On the day of the wedding, Marianna showed not the slightest affection towards Martin. At times, they danced together, but for the most part, she danced with John, her known lover, with whom she disappeared from the midst of the guests, and after two hours, she returned to the wedding hall with John." After the wedding, from February 4th until the 12th, Marianna lived in her father's house, while Martin lived in his own. "The reason for this separation was Marianna's desire to remain in her father's house for a few more days." However, she declared to her father "a few days after the wedding that she could not live with Martin." It also appears, from the not entirely clear wording of the documents, that her father forbade her to leave, fearing that she would not receive the dowry that Martin was to pay for her. On the 11th, Martin "went to her father's house, in order to fetch his wife, who did indeed get into the carriage, but immediately jumped out of the carriage and ran home, saying: 'Let my father go, since he is the one who forced me into this marriage.'" Finally, on the following day, that is, February 12th, she left with Martin, compelled by her father's authority. "On this very day," Martin says, "I attempted to fulfill the marital duty, but my wife excused herself on the grounds of illness. On February 13th, I tried again, but the act was not completed, because she resisted." On February 14th,

[*Latin ed. p. 539*]

GNESEN and POSNANIEN. On the 539th day, both came together to the place where the patronal feast was being celebrated that day. They entered the house of the father and were in the church; but at the 2nd hour, Marianna left and disappeared. Between the 8th and 9th hours, she was seen in the public street with her lover, John. The father chastised her when she returned home after the 9th hour. Both returned on February 15th to Martin's house; but on March 3rd, Marianna abandoned her husband. "She said that she could not live with Martin, nor could she bear him, and that she would not return to him." Then, the parents ceased to try to force her to return, and they received her back into the house. The father, who had taken from Martin the money from the sale of Martin's property, which had been sold near the house, did not want to force his daughter any further. After some time, on October 3rd, 1885, Martin wanted to bring her back

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home again, and this time he used the authority of the civil court. But it was in vain, Marianna refused. Having recounted these historical events, I will now express my opinion regarding the marriage in question, and first, concerning the consummation of the marriage. Although Martin asserts that his marriage with Marianna was not consummated, he does not always state this without some hesitation. On the other hand, Marianna affirmed before the civil court, at the request of the archiepiscopal Consistory of Gnesen on January 25th, 1890: "Perhaps for 4 weeks I lived together with my husband Martin, who, in truth, during that time consummated the marriage with me through intercourse." Her testimony is therefore of great importance, because she herself, at that time, desired a separation from the Church. It is true that she has not always affirmed the opposite. Therefore, concerning the consummation, if the acts do not show it, nothing certain can be said. If there is nothing certain in the records regarding the consummation of the marriage between Martin and Marianna, then, in my opinion, the situation is not such that it proves the nullity of the marriage due to lack of consent. To demonstrate this, let me propose the following dilemma: the fear that Marianna experienced was either very great...

[*Latin ed. p. 540*]

540 GNESNEN. AND POSNANIEN. or light. But in both cases, there was no agreement, for the things reported about Marianna in the proceedings, unless they are explained by her grave fear, would demonstrate that Marianna was of such a disposition that she would by no means wish to enter into marriage; indeed, she had determined to live no conjugal life with her husband. Therefore, it seems that she entered into the marriage, not by fear, certainly, but by a substantial error: for from the beginning, and afterwards, she has shown that she did not wish to fulfill her conjugal duties, and she constantly rejected her husband, and at the same time, she lived an infamous life with others; and this conduct appears to be contrary to the good of the offspring and the good of faith, and it seems to undermine the essence of the matrimonial contract, and therefore, the nullity of the bond is established because of the lack of true consent. But it is clear from the proceedings that the fear was unjustly instilled, and that Marianna entered into the marriage with Martin only because of the fear that was instilled in her by her father, in order to extort her consent. In our case, no witness is found who affirms that she ever had the will to enter into marriage with Martin; on the contrary, they affirm the opposite, and all, with one voice, proclaim that she suffered violence and fear. The only witness who says that Marianna was pleased with the dowry and prepared herself for the marriage, also testifies how forcefully she was compelled. Therefore, all the testimonies and presumptions support the claim of fear. Regarding the gravity of the fear, a few observations may be made. It was a reverential fear in this case, it is true. But, "which constant and prudent

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man," says Sánchez De Matr. L 4, disp. 10, n. 14, "would not consider it a grave evil to always have an offending father before his eyes, from whom he depends and with whom he will always be conversing?" Marianna was a girl of 17 years. She could not leave her father's house at that time, as she did later, when she was already of her own free will. "She could not go to serve elsewhere from the house, because her father would not have allowed it," testifies her friend. Therefore, it is of no consequence that the Defender of the Marriage...

[*Latin ed. p. 541*]

GNESNEN and POSNANIEN, page 541: Gmesnae writes: "Marianna was able to leave her paternal home, as she did after her marriage, and she has gone to distant regions, where she earns her living through manual labor, which, given that she comes from the lowest social class of Orte, is not something that should be considered shameful by anyone." Nor is it of lesser importance that he states: "The father was not fit to inflict a serious harm upon his daughter, which is confirmed by the fact that, in the end, he gladly received his daughter back into his home, even though she did not want to live with her husband," and he did so because he no longer needed the money of Martin. The following principles of jurisprudence are widely accepted: prolonged and persistent persuasions, combined with a sense of reverence, even without threats or beatings, can constitute a fear that causes a steadfast man to waver, and therefore a serious and effective impediment to marriage. If we add that the father, who is instilling fear, has an interest in the celebration of the marriage, because he hopes that a great benefit will accrue to him or his family, then, even the jurists say, it becomes even more difficult for the daughter to oppose her father's wishes, because a great fear arises of incurring his greater indignation. All of these things are present in our case, and therefore, I believe, it cannot be denied that force and coercion were used to bring about the marriage, and consequently, the nullity of the marriage cannot be denied. But perhaps it could be said that this marriage, even if it was null at the beginning, at least, as Defensor Matr. Gnesnae affirms, was ratified and validated by that cohabitation and consummation that took place from February 15th to March 4th? But 1. at that time, Marianna suffered great violence at the hands of her father, who chastised her severely. Furthermore, 2. although subsequent consent does indeed validate the marriage, if someone who has suffered fear intends to add their consent, and thus purge the fear, it is required that the party who suffered the fear acknowledge that the marriage was null. "It is required..." says Schmalzgrueber, vol. 4, page 1, title 1, § 421, "that the one who is ratifying..."

[*Latin ed. p. 542*]

542. GNESNEN and POSNANIEN: If a marriage was previously con-

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tracted, it must be understood to have been invalid; for if, through error, someone believes that a previous marriage was valid, and cohabits, that cohabitation will never validate the marriage. Sánchez De Matr., book 4, Disputation 18, number 8, affirms the same: "The second condition is that the one ratifying the marriage must know that it was null." However, from the facts, it is clear that Marianna did not consider the marriage to be null at that time. She certainly knew that an injustice had been done to her, considering it irreparable.

3. This renewal of consent is sometimes presumed by law unless the contrary is proven, if the party who suffered the fear cohabited for a long time of their own accord, or if they voluntarily had intercourse. However, if it is not established that there was a voluntary renewal of consent on one side, but it is established that the intercourse and cohabitation were forced on the other side, then the revalidation of the marriage cannot be presumed. This is precisely what happens in our case.

It must be concluded, he says, that there was sufficient fear to extort consent from her to enter into the marriage, because she considered it worthless, and did not accept the obligation of it. For if it had been a true marriage, she would have resisted seriously and resolutely, because she was not timid, but rather brave and bold. In this sense only, we can say that the fear was not relatively grave in this case.

Therefore, the marriage must be considered null due to the lack of true consent.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE OFFICE. The marriage covenant, which Martin, aged 28, entered into with Marianna, who was 17 years old, on February 4th, in the year 1884, is declared to be infected with a flaw, imperfect, and incomplete due to the fear instilled by Marianna's father. I consider it superfluous to speak of the alleged unconsummation of the marriage, because the case is so hopeless that the presiding judge did not even deem it worthy of investigation; and rightly so, since once a woman clearly declares that the marriage has been consummated, the man does not even dare to admit that he has been forced to do so even once.

[*Latin ed. p. 543*]

GNESNEN. AND POSNANIEN. 543 Concerning the alleged fear in the Mariana Islands, the episcopal curia inquired so negligently that we cannot ascertain anything certain from the records transmitted to the Holy Congregation. Very few, perhaps only five or six, witnesses were heard; these were questioned hastily and urgently, but their accounts were general and incomplete. Indeed, the parish priest, who received the matrimonial consent of Martin and Mariana, as well as Mariana's mother, although the minister of the sacrament identified them, was not brought in for examination. However, when the aforementioned counselor recalled the most

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celebrated constitution *Nimia licentia* for the regions of Poland, issued on May 18, 1753, in which Benedict XIV cautions: "It is incumbent upon the parish priest to, before public announcements of an intended marriage are made in the church during the solemnities of Mass, himself carefully and, as it were, to the ear, inquire of both the bridegroom and the bride, whether, of their own free will, spontaneously, and truly with the consent of their minds, they intend to enter into marriage with each other. " Therefore, to declare a marriage invalid due to a lack of consent, I consider it imprudent for the parish priest, if he has the opportunity, not to have heard them. Moreover, Benedict XIV adds: "These and other such circumstances, after the parish priests have carefully examined them, if they discover that any of these circumstances may be lacking or harmful, they are obligated to suspend the announcements in the meantime and to bring to the attention of their proper superior that which may hinder [the marriage], so that he, according to the demands of the case, may provide appropriately, by virtue of his authority and office." Therefore, since the parish priest, to whom Mariana could have easily manifested the violence done to her, brought nothing to the attention of his proper superior, it must be considered that the alleged fear either does not exist in reality, or is not just. Hear Sabellius, *Summa*, tract. § *De Metu*, n. 3, where it is said: "Five cumulative conditions are required for a fear to be considered just... The fifth [condition] is that the one who is afraid cannot easily encounter the evils that..."

[*Latin ed. p. 544*]

544. GNESNEN and POSNANIEN fear that something adverse may befall them: for if they could be healed of their ills by some other means, "THERE IS NO JUST FEAR." Since these matters stand thus, I humbly request a response to the doubtful question, "Does a nullity of marriage exist in this case?" If not, the proceedings should be prolonged and completed according to the instructions to be given. With these preliminaries stated, the purpose is to resolve the doubt: Does a nullity of marriage exist in this case? To this doubt, the Sacred Congregation responded on July 23, 1892: "The proceedings should be prolonged and completed, according to the instructions to be given by the defender of the marriage bond by virtue of his office." The instructions were of the following tenor: PROCEEDINGS IN THE CASE. "I. The parish priest who admitted the spouses to marriage should be examined; since he, according to the provisions of the Constitution *Nimiam licentiam* of Benedict XIV, before the marriage, carefully and, as it were, secretly, questioned both the bridegroom and the bride separately, to ascertain whether they were freely and willingly, and truly with the consent of their minds, to be joined in marriage to each other. "II. The examination of witnesses of the seventh degree should be completed, according to § and following, of the Instructions of the Sacred Congregation of the Council, dated August 22, 1840; among whom, the

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mother of the bride, Mariannae, must be thoroughly questioned. Furthermore, each witness should be diligently urged to confess, with appropriate and urgent questions, the facts relevant to the matter." The examination, according to the instructions, was completed, and new and detailed observations were made by the canonist consultant and the defender of the bond. OPINION OF THE CANONIST. This mandate of the Sacred Congregation was fulfilled. Indeed, the parish priest, when questioned, responded: that he did not know the parties otherwise than through the occasion of the marriage; that he had indeed questioned the couple, but not separately, since they came together for the prenuptial examination. Since the parish priest knew nothing of any doubt concerning the full will of the bride, since they presented themselves together for the examination and heeded the exhortation, and furthermore, since before the marriage they had confessed twice.

[*Latin ed. p. 545*]

In Gnesnen and Posen, 545 testimonies were taken, and during the time of the marriage, the bride responded to the questions with a clear voice and without hesitation. Nothing occurred to the parish priest's mind regarding the difficulties, about which he only later heard from the lawyer, when the matter was being handled in the civil court, nor from the man who frequently visited the parish priest, complaining about his wife, who refused to live with him, and asking him to try to bring her to reconciliation. Marianna did not come to the parish priest's invitation. Therefore, in this matter, the testimony of the parish priest seems to add nothing new. However, two things are noteworthy from his questioning: first, the parish priest was of the opinion that the marriage between Martin and Marianna was valid; second, when asked whether Marianna could not have been offered refuge by relatives or even others, in order to avoid [paternal] threats, the parish priest responded that he did not know about this, but that in those regions, a girl in Marianna's condition would suffer greatly if she were to be a servant in the service of others. The questioned witnesses, in addition to what they had already stated previously, also testified as follows: Witness Pierdzioch: Marianna had no relatives. She was obliged to obey her father's commands, because he was a violent man who was ready "to tear the hair from his daughter's head." In Toniszewo, she did not go to her husband under duress, because at that time, the witness heard nothing about any coercion, neither from relatives nor from others. The mother of the husband was the reason why Marianna left Toniszewo. For, after Marianna came to her husband, the creditors of the father of the wife were harassing the husband, and his mother reproached Marianna for this, and, offended by this, she left Toniszewo. Thus, Martin indicated this as the cause of the separation to the witness, who was to take Marianna back to Toniszewo in a carriage. The witness also saw that Marianna wanted to return to her

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husband, but her father at that time did not want to let her go. The witness heard from Marianna herself at that time that the marriage had not been consummated for this reason, because when the husband and wife were lying in the same bed, "the husband did not move." Martin, however, said that he had had intercourse.

[*Latin ed. p. 546*]

546. Of Gnesen and Posen. But to the Mariannae Islands, they said: "Leave me, for I am sick." - Witness Ziolkowska: Seven days after the wedding, Martin came to take Marianna to her parents. But she was not at home, but was wandering about with her lover. Her husband waited for her in vain. Towards evening, he sent her mother, and then her brother, to find her, and when they arrived, they struck her with a rope in the presence of her mother, while her husband was present, observing this with equanimity. - Witness Grabovska: Marianna said before the wedding that her father had forced her into the marriage, and that if she did not marry him, he would kill her. - Witness Grabovski heard Marianna's father threatening her with death, and he himself heard Marianna weeping and repeatedly telling witnesses and her husband that she would not be able to live with Martin. - Witness John, Marianna's lover, testifies that from the time these events occurred, he received from Marianna herself that her parents and a certain woman had persuaded her to this marriage, but had not forced her; that Marianna had hated Martin even before the wedding, and that on the very day of the wedding, she told her lover that she did not want to live with Martin, nor would she go with him; but that she feared her father, who had power over her in all things. Marianna's mother, when questioned about the threats of her husband, said that she had heard them once or twice, more or less two weeks before the wedding. The father had said to Marianna that he would kill her with a sword if she did not marry Martin. Marianna feared her father, and repeatedly told him that she was marrying Martin, but would not stay with him. She had no relatives to whom she could go, and could not leave, due to her youth. She led an immoral life, which she concealed from her father, whom she feared. She complained to me, her mother, almost every day about her father's will. She was ashamed to go to the parish priest. She did not want to speak with Martin. On the day of the wedding, she was sad and wept, and said that she was entering into marriage with Martin, but would not live with him. After she left her husband, she said again that she did not want to live with him. However, at another time, after she left her husband, she wrote to him.

[*Latin ed. p. 547*]

GNESNEN and POSNANIEN. She wrote 547 letters to him, stating that she wished to come to him and live with him; but he replied that she should

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come to him. Marianna, who now resides in Schleswig-Holstein, was also questioned again, and before the ecclesiastical judge, she testified as follows: She was born on August 14, 1864; therefore, at the time of the marriage, she was not 16 years old, but 20. She entered into marriage with Martino under duress from her parents. Her father threatened her, saying: "If you do not marry Martin, I will shoot you with a lead bullet, even though I would be condemned to perpetual imprisonment for this." He also attempted to beat her. However, he never actually beat her, "because," says Marianna, "my father, although he was severe, I never dared to contradict him." She was unable to flee because her father had given her nothing, and indeed, he had even taken away her clothes, as he threatened, and with the help of the authorities, he had her brought back home. When her father was away, she often complained about this matter to her mother, but her mother told her: "If your father wants you to marry Martin, you will eventually have to do so." She could not tell Martino that she did not want to marry him, because she was never alone with him; but she wrote this to him. To friends and neighbors who told Marianna that she should not enter into marriage against her will, she replied: "I must do this because my father wants it; otherwise, he will not give me bread, he will cast me out without a witness, or he will kill me." Even though she had this in mind, she intended to abandon him at the first opportunity. They never consummated the marriage, although they were in the same bed. He did not demand it; nor did she. When asked: "Did you not previously say that you had once had intercourse with your husband?" she laughed and replied that she could not help but laugh at such questions. After being seriously admonished and questioned again about this matter, she replied: "I said this to my parents and also to the lawyer." When asked: "Why did you say this?" she was distressed. From further questioning, it became apparent that Marianna, who was being questioned in German (her native language is Polish), had not fully understood the question, and had intended to answer that she had told her parents and lawyer that the marriage had never been consummated. Afterward, she confessed that the father of the child she bore was Martino.

[*Latin ed. p. 548*]

Gnesnen and Posnanien. It is certain that Szymanski, to whom she wished to marry after obtaining a civil annulment of the marriage; however, she knew nothing at that time about an ecclesiastical annulment. But, since the divorce could not be obtained so quickly, Szymanski went to America. She was further questioned as to whether she knew, when she entered into the marriage, that she was abusing the sacrament. To this, she gave an affirmative answer. Did she truly believe, at the time of the marriage, that she was permanently united to Martin and that she could not marry anyone else? "Indeed," she replied, "but I did not want to live with him." It

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must be added that the judges in this latest process expressed themselves very well concerning Mariana. They consider her to be an honest and trustworthy woman. The witnesses, with the exception of two whom she herself cited and who had known her at an earlier time, testified unanimously that they had heard from Mariana about the pressure that her father was exerting on her, and that she had married Martin solely out of fear of her father and under duress. Mariana's friend (Neumann) adds that Mariana told her that her husband "slept next to her like a piece of wood, without life." Other witnesses say that they heard from Mariana that she had lived with her husband, but that she had not been able to have relations with him, and that she did not want to, because he was cold; that when they went to bed, he turned his back to her, and that they had never lived together maritally. Although the initial opinion I expressed, after consulting with a learned theologian, was that this marriage should not be considered valid, since it had begun on the part of the woman through force and unjust fear, I, as I have said, am now more inclined to the opinion that the marriage was vitiated rather by a lack of consent regarding the essence of the marriage. Now, after carefully examining the new proceedings, I am more and more confirmed in my previous opinion, and new testimonies have come to light, and new arguments have emerged, which demonstrate with all clarity that Mariana entered into the marriage without the intention of living with her husband; in this, however, I have changed my opinion, since I am now convinced that Mariana truly also...

[*Latin ed. p. 549*]

GNESNEN and POSNANIEN. In the year 549, she was joined in marriage by force and through great fear; for having read the new documents, I am compelled to believe that what I had previously stated about the nature of a woman who is by no means timid was uncertain, indeed, false, for she truly feared her father, as appears from the testimonies cited above. Furthermore, the testimonies now presented most strongly demonstrate the lack of consummation; unless, that is, something in what was said in the initial proceedings introduced some doubt; and this doubt is not removed by what has been newly stated. However, whatever may be the case regarding consummation, when it is a question of the nullity of the marriage, if it can be argued that, for the first time, fear was sufficient to extort from Marianna consent to enter into the marriage, because she considered it worthless and would not undertake its obligations, although she was not timid, but rather strong and bold, then now, more than ever, I am convinced that fear was more than sufficient, since from the new documents it is discovered that she was extremely timid with respect to her father. "Therefore, it remains: that the marriage is null due to the lack of true consent." OBSERVATIONS OF THE DEFENDER OF THE MAR-

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RIAGE EX OFFICIO. Regarding Marianna, who contends that the marriage she contracted in the year 1884, on February 4th, at the age of 21, with Martin, who was 28 years old, was invalid due to fear instilled by her father, the Most Excellent Senate, in a general assembly on July 23, 1892, wisely decreed: - "Let the proceedings be extended and completed according to the instructions to be given by the defender of the marriage ex officio." The instructions were prepared, the proceedings of the case were completed with due diligence, and, if I am not mistaken, they reduce to nothing the arguments that Marianna has presented against the marriage. For it is now clear that Marianna, when she declared to the judge: "That as a 17-year-old girl, I did indeed enter into marriage, but against my will and for the sake of my safety, under threats, and with invincible aversion towards Martin," she spoke with a certain adherence to the truth. Indeed, the true state of affairs is this: Marianna was joined to Martin, not as a delicate girl of SEVENTEEN, but as a young woman of TWENTY-ONE years.

[*Latin ed. p. 550*]

550. GNESEN. AND POSNANIEN. In order to prove the asserted invincible aversion towards Martin, Mariana appears to be entirely determined to suggest that she was betrothed to Martin, while being preoccupied with the love of another young man. However, a new investigation reveals that Mariana was not captivated by anyone's love, but rather had already exposed her body. Regarding this matter, Boleslaus Johm states: "I had dealings with Mariana WITHOUT ANY INTENTION OF MARRYING HER; WHETHER SHE HAD SUCH INTENTIONS, I DO NOT KNOW." To the question, "What kind of person is Mariana? Did she fear her father? Was she dependent on him?" Petrus Pierdzioch responds: "Mariana had dishonorable relations with OTHER YOUNG MEN. This was reported by others. Whether she was punished by her parents for this, I do not know." Ioseph Grabouski states: "I heard that she had relations with others EVEN ON HER WEDDING DAY." Dominica Ziokowska reports: "Someone told me, but I no longer remember who it was, that at the time of the wedding, that is, AT THE TIME OF THE WEDDING FEAST, Mariana went out of the gathering with another man and joined him." With such morals, Mariana is not easily repulsed by any man of the male sex, and it is certainly a proven fact that she was not repulsed by Martin. Indeed, in addition to the fact that Elisabetha, Mariana's mother, testifies: "Mariana DID NOT HAVE an aversion towards Martin... She danced with him several times"; in addition to the fact that Iosepha Grabowska reports: "Mariana danced with Martin several times during the wedding, I do not know how many times"; which is confirmed by other witnesses as well. Although Mariana left Martin after one month of conjugal cohabitation, she did not leave because of antipathy towards the man, but rather blamed Martin's mother for her avarice, and she fled because she could not bear to live a solitary

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life at home. Hear Petrus Pierdziock, the most informed witness, who is, in fact, Martin's sister's husband. "Martin's mother," he says, "reproached Mariana, and from the moment she entered the house, creditors and bailiffs began to harass her." Offended by this, Mariana left her husband's home, Mar-

[*Latin ed. p. 551*]

GNESNEN. AND POSNANIEN. 551 tiny. Thus, she indicated the cause of the separation immediately after leaving Martin in the Mariana Islands. "ON RIGHTS AND ON DISSOLUTION" "DURING THE PERIOD OF COHABITATION, NOTHING NEW." Elizabeth Novak, Martin's mother-in-law, clarifies: "Marianna said, after leaving her husband and coming to her parents, that she felt she was being treated with contempt, that she was not being provided for, and that she did not want to live with him. HOWEVER, SHE DID NOT HAVE AN AVERSION." Therefore, it is established beyond any doubt that Marianna never had any desire to leave Martin. This one thing, namely, the intention or purpose of preserving the marriage bond, if I am not mistaken, was present in Marianna when she married Martin; which, as is clear, is quite different from not intending to be bound to preserve the marriage bond, or to avoid adultery. The first of these [situations] occurs in almost all those who marry and who have not borne the yoke from their youth; the second, neither in these nor in those who are moderate in their marriages, is usually found: not in the moderate, because they, while entering into marriage, intend to observe the rights and obligations attached to it; not "in the dissolute, because, accustomed to scorn the law given to us by the Author of nature without impunity, they are not concerned about the OBLIGATION, as long as access to it remains open to them at will. This obligation is undertaken by those entering into marriage by the very act by which they do not EXCLUDE it. Moreover, Martin's mother testifies: "Marianna often told her father that she WAS MARRIED, but that she WOULD NOT STAY WITH MARTIN. I HEARD THIS MYSELF." Indeed, from Marianna's own words, we gather that she did not exclude the OBLIGATION in the celebration of the marriage, but only the EXECUTION or fulfillment of that obligation in the celebration of the marriage. Marianna is not mistaken. Sánchez, in De Matrim., book 2, dispute 29, no. 12, has something relevant to this matter: "It must, however, be observed that there is a difference in opinion regarding the three goods of marriage, namely the sacrament, the bond, and the procreation, as regards the OBLIGATION, and as regards the EXECUTION, for as regards the OBLIGA-

[*Latin ed. p. 552*]

552. GNESNEN and POSNANIEN. These matters pertain to the essence of marriage... However, if these things are considered with regard to their

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execution, and if the sacrament itself, which is an indissoluble bond, is considered good in itself, then this is part of the essence of the sacrament of marriage; *not* faith and offspring. Therefore, an intention contrary to the good of the sacrament invalidates the marriage, *but* an intention contrary to the good of faith and offspring does not: although, if the intention of faith and offspring were opposed, *in their own principles*, it would likewise invalidate the marriage; just as if someone were to contract marriage, not intending to be obligated to raise children, or to prevent them, or to maintain the faith, the marriage would be invalid, because these things are essential to marriage, and such an intention excludes the essence.

To return, therefore, to the point from which I digressed, Marianna stated to the judge, as we said, "That she entered into marriage at the age of 17, but *because of threats* and *for the sake of her safety*." It is best to anticipate that the matter concerns threats, and that nothing else is involved. For in the question, "Since you were a girl of 16, 17 years old, did your father ever beat you?" Marianna clearly states: "HE NEVER BEAT ME." Therefore, all the witnesses who speak of beatings are stating something completely contrary to the truth. Indeed, the girl, who was not seventeen years old, but the *twenty-first* year of her age, as has been shown above, and who was immersed in a den of vices, would not be frightened by any threats, but rather, the threats must be very serious, persistent, and unavoidable. This is not established. From the discussion, the written question "Is there proof of the nullity of the marriage in this case?" clearly leads to the answer "NEGATIVE." With these new elements added, the purpose was to diminish the proposal. The question: Is there proof of the nullity of the marriage in this case? RESOLUTION. The Sacred Congregation, after discussing the matter on September 1, 1894, decided to respond: "Affirmative."

[*Latin ed. p. 553*]

COMPOSTELLANA: A REQUEST CONCERNING THE ADMINISTRATION OF OFFERINGS. September 1, 1894. Through summary petitions. A SUMMARY OF THE FACTS. Regarding the status of the Church of Compostela, as presented to the Sacred Congregation on November 10, 1893, the following request is found: The Ordinary states: In the most recent provincial council of Compostela in the year 1887, which was approved by the Sacred Congregation, it was declared that the administration of offerings and alms, which are collected in sanctuaries, chapels, and public oratories, belongs to the parish priests. Some of the parish priests claim ten percent for themselves, by title of administration, of the aforementioned offerings, which are not given by the faithful for a specific purpose, but for the benefit of the cult of the Virgin Mary or of some Servant of God who is venerated in the sanctuary; this practice seems to be objectionable for many reasons. The Archbishop, questioned for a further explanation

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of the matter, explained the situation as follows: "The alms, about which I inquired in the request concerning the administration fee, are not alms for Masses, but are generally offered by the faithful for the cult and honor of the Saints." "Most often, such alms are offered in the form of grain; they are collected by the parish priests, stored, and sold, and then the proceeds, after deducting expenses, are used for repairing temples or altars, for their lighting, for sacred vestments, etc., for which the parish priests render an account to the Bishop. "Now, some parish priests spend the entire value of these alms for the aforementioned pious purposes, while others want to receive ten percent of the value of the alms, as a compensation for the labor involved in collecting, storing, and selling them. The laity have no right or share in the administration of these alms."

[*Latin ed. p. 554*]

554 COMPOSTELLANA: "Sometimes, the money collected from these alms, which is not actually necessary, is kept by the Episcopal Curia through the aforementioned Official, called the Depositary of Charitable Funds, who delivers it, at the order of the Ordinary, to the Parish Priests or Rectors of Churches, when it is to be spent in the aforementioned places. This has been effective in preventing thefts and misappropriation of alms. Therefore, the undersigned Archbishop of COMPOSTELLANA wishes to know from the Most Reverend and Most Venerable Fathers of the Sacred Congregation [of Rites] the following: '1. Whether Parish Priests or Chaplains can receive something, up to ten for one hundred, for the collection, safekeeping, and sale of the alms, as mentioned above. '2. Whether the aforementioned Official, the Depositary of Charitable Funds, can safely receive five for one hundred for the safekeeping of the money which he safeguards."

SYNOPTIC DISCUSSION:

PRACTICE TO BE OBSERVED. Considering the fundamental principle of natural and evangelical equity, namely that the worker is worthy of his wages, it seems that an affirmative answer should be given to the questions posed. Nor does the remuneration paid to the Parish Priests or Chaplains impede, since the service rendered is due to their respective office; for the administration of the offerings belongs to them by order of the Provincial Council, which, considering this office to be distinct from the duty of pastor of souls, could assign it to others. However, if one office is not included in another, the remuneration given to one cannot be attributed to the other. Indeed, the management of these offerings, namely the safekeeping and sale of grain, and other goods of this kind, is certainly difficult and laborious, and differs greatly from the pastoral care, and therefore a special remuneration seems to be due to them for this service. This applies to

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Parish Priests and Chaplains. As for the Depositaries of Charitable Funds, it should be noted that the care of the deposited money belongs to them by their office; therefore, it does not seem equitable that they should receive a special payment for the money deposited with them, which originates from...

[*Latin ed. p. 555*]

COMPOSTELLANA 555 from the offerings of the faithful. It would only be just that their compensation be increased somewhat when their labor is notably increased due to the deposit of money for offerings; which, however, in practice, does not seem likely. Therefore, in any case, a measure of compensation of approximately five percent appears excessive. For parish priests and chaplains, however, a certain and absolute rule cannot be established, since the matter must be determined according to the circumstances; and sometimes a compensation of up to ten percent may be just; at other times, it may be less equitable: the matter depends on the prudent judgment of the Bishop. BUT THIS PRACTICE SEEMS CENSURABLE. But, on the contrary, it seems primarily to be rejected that the administration of offerings does not pertain to the office of the parish priest; for just as the parish priest has a legally founded intention to receive the offerings of the faithful, so too he has it regarding their administration. On this matter, Fagnanus, in chapter Pastoralis, De his quae fiunt a Praelatis sine consensu capituli, after noting "that the parish church has a legally founded intention regarding all spiritual revenues within the limits of its parish," under number 30, says: "However, it must be understood that although the offerings are destined for a certain use by those who offer them; nevertheless, their administration pertains to the parish priest by law of parochiality, not so that he may apply them to himself, but so that he may faithfully safeguard and dispense them for the uses intended by those who offer them," and he confirms this doctrine with numerous authorities and decisions of the Sacred Roman Rota, as noted by Reiffenstuel in Tit. De Decimis, Primitiis, et oblationibus under number 190, fully adhering to this common opinion. Furthermore, it should be added that such offerings are of no small benefit to the parish priests, because while they provide for sacred worship, the adornment of churches, maintenance, and restoration through money offered by the faithful, they spare the revenues that would properly belong to them, which would otherwise have to bear some of these expenses. If, moreover, it is considered that the sacred functions are performed by the parish priests and chaplains in their own churches,

[*Latin ed. p. 556*]

556. Regarding the administration of offerings in COMPOSTELLANA, it is evident how those who administer such offerings could directly derive profit. Therefore, the practice of those who administer such offerings with-

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out receiving any compensation appears more just and more in conformity with common law. Nevertheless, it must not be denied that, at times, a special remuneration may be appropriate, if the administration involved a special effort or industry that naturally exceeded the ordinary duties of a parish priest; in such a case, equity dictates that the labor of the administrator should be compensated with some remuneration, to be determined by the Bishop's prudence, considering all relevant circumstances. As for the custodians of pious funds, unless their office is specifically established for the purpose of safeguarding the money offered, which is unlikely, any remuneration calculated as five percent of the sums deposited appears entirely excessive, because they are, by their own office, bound within the diocese to provide such services for pious funds; therefore, they should only receive some special compensation when the deposit and custody of the offered money significantly increased their ordinary workload; except, of course, in the case where they expressly obligated themselves, upon assuming the office, to safeguard any sum of money, originating from pious offerings. Therefore, this type of retention, concerning the sums of money administered or deposited from offerings, whether in itself or in its manner, appears to be objectionable, except for the prudent judgment of the Bishop in determining any extraordinary remuneration for extraordinary circumstances and labors. With the foregoing premises, the question was raised as to how the request of the Archbishop should be addressed. RESOLUTION. After deliberation by the Sacred Council on September 1, 1894, it was decided to respond: To the first and second questions, as explained, negatively. FROM WHICH IT IS UNDERSTOOD: It seems unjust to grant parish priests any compensation for the administration of offerings, which is rightfully part of their office; and because these offerings constitute a considerable benefit for the parish priests.

[*Latin ed. p. 557*]

557 ARETINA CONCERNING THE RIGHT TO NOMINATE CERTAIN CHAPLAINS. September 1, 1894. By summary petition. Under the date of April 9, the archpriest of the collegiate church of the place of Castellon de Ampurias, in Florence, offered the following petition: "The collegiate church of this place has two rural parish churches; one of which is currently vacant. Until now, chaplains have been appointed by the archpriest together with the canons of the first establishment. Since all the canons have disappeared through the suppression of civil law, the archpriest asks whether the election of chaplains now devolves to the Ordinary of Aretina, or whether it remains entirely with the archpriest. Upon being consulted, the Ordinary of Aretina responded that he found nothing recorded in the Curia other than that the two aforementioned chaplaincies depend on the archpriest and six canons of the mass, from whom the chaplains are to be chosen."

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SUMMARY OF THE CASE. A SYNOPTIC DISCUSSION. THE ELECTION APPEARS TO DEVOLVE TO THE ORDINARY. In order that sufficient attention be given to this matter, it should be noted that the Ordinary has a well-founded intention, according to the law, to confer all benefices in his diocese, as Reiffenstuel states in title V, De praeb, et dignit., paragraph 177: "Therefore, the collation of benefices pertains to the local Bishop by common law, so that he has a well-founded intention regarding the institution and deposition of priests, and other clerics, in the benefices of his diocese; and if another claims this for himself, he must prove that it legally belongs to him. This is held by the laws immediately cited, from which it is clear that the collation of benefices in his diocese, as far as it pertains to common law, belongs to the Bishop; and the Glossa notes in chapter Quamquam 18, verse Devolvetur de elect., In 7 Abbas, chapter Cum ex iniuncto, paragraph 2, De Haeret et Garcias, part 5, chapter 1, paragraph 235, with others. The consequence of this principle is that, in doubt, the Bishop..."

[*Latin ed. p. 558*]

558. The ARETINA [family] aims to possess fully this right; and whenever the right to confer benefices is granted to another, immediately this right reverts to the Ordinary, when any of the conditions stipulated in the grant of the privilege are lacking. However, in any case, even if the subject of the privilege is absent de facto, namely, the chapter of a collegiate church, nevertheless, the right of collation reverts to the Ordinary by its very nature, as if the obstacle were removed. THE ELECTION SEEMS TO BE VESTED IN ONE ARCHPRIEST. But this cannot be admitted, for the subject of the privilege has not been extinguished. In truth, it is generally the case that the rights pertaining to a moral body can be exercised even by one person alone, when others are lacking, just as by the strict law. It is unjust to admit that someone is deprived of his right because another, or others, are either deprived of it or do not exercise it. Thus, Barbosa states explicitly in *Tractatus de canonis et significationibus*, chapter 41, paragraph 14, when discussing the right of devolution: "That it may be better understood, it must be noted that the devolution of an election occurs either because of the fault of the elected, when other electors are chosen who are not blameworthy, or sometimes to the next superior, and sometimes directly to the Roman Pontiff. For either only a part of the chapter is at fault, or the entire chapter is at fault; in the first case, the power of electing devolves to other electors who are not blameworthy, even if they are fewer, chapter 2, where the *Glossa De postulat*, *preamble*, d. c. *bona memoria*, along with others cited above, indeed even if only one person remains, without the innocent being harmed, chapter *quaesivit*, concerning those things that are done by the majority of the chapter, and the right of the college remains and can be preserved, even if others are dead, deprived of their rights, sus-

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pended, or excommunicated; *Glossa verb. pauciores* in chapter *gratum*, *De postulat*, *preamble*, etc." Therefore, if, through the vicissitudes of time and men, the archpriest has lost his canons, he does not seem to be deprived of the right to nominate chaplains to the churches dependent on the chapter, because if all the members of the chapter, with the exception of one, become unworthy of electing, in this one person the right of electing, and therefore, *a fortiori*, the right of nominating, remains.

[*Latin ed. p. 559*]

ARETINA 559: It must be known that, in the absence of any fault on the part of the college, the surviving archpriest alone remains suitable for the exercise of this type of jurisdiction. Having considered these matters, the question was raised as to how a response should be given. RESOLUTION. The Sacred Congregation decided on September 1, 1894, to respond: That it pertains exclusively to the Archpriest.

FROM THE SACRED CONGREGATION FOR BISHOPS AND REGULAR CANONS OF AUGUSTANA VINDELICORUM CONCERNING FUNERAL RITES. May 8, 1895. SUMMARY OF THE CASE. The Institute of the Brothers of St. John of God, commonly known as the Fatebenefratelli, in Bavaria, at the beginning of this century, subjected to persecution by secular authority, with laws prohibiting amortization, the reception of novices into the Institute, was so diminished that the hospitals could only be administered by one religious, who, according to the spirit of his rule, devoted his work of charity to the sick. Consequently, the care of souls of the sick in the hospital and other parochial functions, which had previously been exercised by religious by virtue of apostolic privileges granted to them, were returned to the respective local parish priests. However, in the middle of this century, the situation appeared to have changed somewhat. Indeed, when the Institute of St. John of God acquired the estate of Stapf in the town of Schweinspoint in the parish district of Marxheim on July 27, 1860, a convention was held in 1861 between the royal government and the Superior Provincial of Bavaria, Father Magnobonum Markmüller, as delegate of the Order, in which, after a prior derogation of the law of amortization, the Order was granted the faculty in the aforementioned estate.

[*Latin ed. p. 560*]

560 In AUGUSTANA VINDELICORUM, unum hospitalis pro viris infirmis fundari debet, cum omnibus privilegiis legalibus, et cuius administrationem et directionem religiosi Ordinis gerent; haec conventio postea etiam approbatione regia die 6 Aprilis 1864 confirmata est. Verum, novo fundato hospitali, sepulcrum proprium non erat; sed mox occasio se obtulit ad hoc providendum: nam cum ampliare coemeterium paroeciale de Marxheim esset necessarium, religiosi petierunt et obtinuerunt ab imperio, ut ibi, propriis expensis, coemeterium pro

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hospitali de Schweinspoint construerent; deinde rem detulerunt ad Episcopum Augustanum, petentes non solum approbationem erectionis novi coemeterii, sed etiam ut iura et privilegia Ordini concessa a Sancta Sede recognoscerentur, tam quoad sepelimenta morientium in hospitali, quam quoad associationem eorum cadaverum in coemeterium hospitalis. Episcopus primae petitionis parti libenter annuit, sed non ita quoad secundam, contendens reclamata iura et privilegia privative spectare ad parochum de Marxheim. Disceptatio Synoptica censet Episcopum petitionem dupliciter respuendam esse: 1°. quia est contra observantiam in sua dioecesi vigentem; 2°. quia est iuri contraria. Quoad primum, recolit rem facti esse, quod non solum in Marxheim, sed etiam in omnibus aliis dioecesis paroeciis, in quibus huiusmodi hospitalia existunt, sepelimenta in ipsis decedentium persolvuntur et relativa emolumenta percipiuntur a parochis localibus. Quare, cum praetentio religiosorum novitatem redoleat, rejici debet eo magis, quia, iuxta Episcopum, neque ipsum gubernium eam toleraret. Quoad secundum, animadvertit Episcopus, petitionem religiosorum opponi conventioni anni 1861 inter ipsos et gubernium initae, 1°. quia iuxta hanc, hospitalis de Schweinspoint habet personalitatem iuridicam Instituti publici civilis omnino pendentis a gubernio, et religiosi dumtaxat temporaneam ipsius directionem retinent: hinc iniuria in themate invoQUAE RELIGIOSIS ADVERSANTUR.

[*Latin ed. p. 561*]

AUGSBURG 561: The rights and privileges granted to the Order are such that the religious have no property. 2. Because in article 21 of the aforementioned agreement, concerning the duties of the hospital chaplain, regarding funerals and other strictly parochial functions, a clear silence is maintained; which, the Bishop continues, clearly indicates that the matter is to be left to the disposition of common law. Finally, the Bishop, setting aside the aforementioned agreement, believes that the claims of the religious can be refuted on another basis. 1. Because, since the new cemetery is outside the grounds of the hospital, indeed outside of Schweinspoint, it is a public cemetery. Moreover, the Bishop continues, according to common law, the jurisdiction of the religious does not extend beyond the boundaries of the monastery; and this is also demonstrated for hospitals administered by the religious Order of St. John of God by the authority of Cardinal De Luca, *Discipline*, XXII, concerning the parish priest: "for he who, being appointed from the same Order or otherwise to administer the sacraments to the sick, is in the place of a parish priest, and the hospital is said to be within his jurisdiction, is considered to have a separate territory and to constitute a certain kind of parish as far as those living there are concerned." 2. Because, according to the provisions of common law, the right to bury the dead in the public cemetery is privately reserved to the parish priests, with the exception made for religious who may be buried in the cemetery

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without the intervention of the parish priest, provided that the burial takes place without solemn ceremony and without undue expense.

DEFENSE OF THE RELIGIOUS. On the other hand, the Religious, citing the previous decision of the Holy Congregation of Bishops and Regulars of April 1, 1892, in the case (1) of the Exemption of the emoluments of the religious of St. John of God in the city of Ciempozuelos, before the Bishop of Madrid, in which all the rights and privileges granted by the Apostolic See to the aforementioned Order were recognized and confirmed, concerning the full exemption from the Bishops and parish priests in matters relating to the care of souls of the sick residing in the hospitals of the Order, the right to conduct funerals and to receive (1) *Recole*, Vol. XXIV, page 63. *Acta*, Vol. XXVII, fasc. GO G XXI. 36.

[*Latin ed. p. 562*]

562 In Augsburg, the benefits [granted to them] are defended by refuting individually the arguments presented by the Augustan Bishop. And first, concerning the observance of religious vows which has been invoked against them, they state that this was introduced when they were subject to the persecution of secular power, a time when it was impossible for them to exercise the rights granted by Apostolic Constitutions; but, they say, with the cessation of persecution and the restoration of order, the rights and privileges, as if by natural law, ought to revive, the obstacle having been removed. Specifically, concerning the hospice of Schweinspoint, they observe that if they have not yet exercised the right of associating the deceased with the cemetery, it is because the aforementioned hospice did not have its own cemetery. Concerning the alleged legal personality and independence of the religious hospice, they respond that it was acquired, built, and equipped with all necessary things, with the money and expenses of the religious; and that, with the help of alms collected by them, the sick are cared for there, to whom they devote their works of charity; therefore, the hospice is indeed a legal entity, but its full administration and direction belong to them, and not merely a temporary direction, as the Bishop seems to suggest. Concerning the formal aspect, the religious observe that the hospice of Schweinspoint is canonically erected, and that more than 12 religious reside there; therefore, they find themselves in a condition, according to the Brief of Urban VIII, similar to that of enjoying the privileges granted to the Order by the Holy See. Furthermore, they point out that the objection raised by the Bishop in article 21 of the aforementioned agreement is irrelevant, for the purpose of this article was only to enumerate the obligations of the chaplain, so that the hospice would not lack religious services, and not to determine the rights and privileges of the religious. Finally, the religious present the argument that the cemetery is located outside the hospice, near the parish cemetery; they deny that it can be called a public cemetery, because this quality is not determined by its location, but rather by the

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law of ownership. Elsewhere in the document, it is stated that jurisdiction is involved.

[*Latin ed. p. 563*]

AUGUSTA VINDELICORUM 563, especially concerning persons: and if, as the Bishop himself declares, deceased religious, since they are exempt from the jurisdiction of the parish, can be associated with the common cemetery without the intervention of the parish priest; similarly, in this case, it should be permitted for the sick who die in the hospital. Therefore, religious demand all the rights and privileges granted to them by Apostolic Constitutions, not only concerning exemption from parochial jurisdiction, but also concerning the right to bury and to associate with their own cemetery the sick who die in the hospital, and to receive the corresponding fees. With these two points briefly stated, the following questions must be clarified:

I. Whether and how the hospital of Schweinspoint is exempt from the jurisdiction of the parish priest in this case?

II. Whether and how it pertains to the religious of St. John of God present in said hospital the right to associate with their own cemetery, without the intervention of the parish priest, the sick who die in said hospital in this case?

III. Whether the same parish priest is entitled to the fees for funerals of those dying in said Hospital in this case?

RESOLUTION. The Sacred Congregation for Bishops and Regular Canons, after deliberation, responded on March 8, 1895:

To I: Affirmative in all respects, and furthermore.

To II: Affirmative, in a proper manner and without pomp, and furthermore.

To III: Negative, and furthermore.

[*Latin ed. p. 564*]

FROM THE HOLY CONGREGATION OF RITES, BELLUNO and FELTRE. Various questions concerning the sacred functions of the Greater Week. February 1, 1895. The Most Reverend Lord, Salvator Johannes Baptista Bolognesi, Bishop of Belluno and Feltre, humbly proposes the following questions to the Sacred Congregation of Rites for a suitable solution: In the Dioceses of Belluno and Feltre, there exist several churches which formerly belonged to Regular families. These, having been dispersed at the beginning of this century by the civil government, were assigned to the secular clergy. In these churches, where the custom of performing the sacred functions of the Greater Week has long prevailed, and due to a lack of priests, certain practices have been introduced in recent years, giving rise to the following questions:

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Question I. Can the Passion of the Lord be sung, if other ministers are lacking, by a deacon ministering concerning the text of the Evangelist, and by the celebrant concerning the words spoken by Christ; or by two deacons, one of whom is the deacon ministering; or (if a subdeacon is ministering in the diaconal order) by two altar servers?

Question II. On the Feria V of the Lord's Supper, is it permissible to sing Mass with the offering of another Host to the sacellum (commonly called the Sepulcher), even though on the following day, in that church, the Mass of the Holy Eucharist is not celebrated, and the same Host is privately carried from the Sepulcher to the sacristy at Vespers? And this, in the negative.

Question III. Is it permissible to sing the aforementioned Mass on the Feria V without the consecration of another Host and without a procession?

Question IV. If no such function is held on that same Feria V, can the sacred Hosts be reserved in their tabernacle until sunset, so that the faithful may be able to adore the Most Holy Eucharist in place of the Sepulcher?

Question V. Is it sufficient for the denudation of the altar to fold the cloths, or altar linens, in such a way that a larger part of the table remains uncovered, when the cloths themselves are removed from the altars?

Question VI. In both cathedral churches, on which days is the Office of a saint celebrated, in whose honor one of the side altars is dedicated, is the Conventual Mass celebrated?

[*Latin ed. p. 565*]

FROM SACRED RITUALS 565 concerning that altar, with the Canons remaining in the Choir and other officials present. Does this custom seem permissible? And the Sacred Congregation, upon the report of the undersigned Secretary, and after a careful vote by the Liturgical Commission, having considered the questions proposed, responded as follows: To I. Affirmative. To II. Negative. To III. Affirmative, according to the Decree of Pope Pius VII (Resolutions on Doubts, June 28, 1821, approved July 31 of the same year), concerning the permission of the Bishop. To IV. Affirmative. To V. The rubrics are to be observed. To VI. Affirmative; provided that the altar is not too far from the Choir; otherwise, Mass should be celebrated in the altar of the Choir, or a suitable space should be prepared near the altar where the Conventual Mass is to be celebrated. And thus it responded and ordered to be observed, on February 1, 1895.

[Signature] CARD. ALOISIUS - MASELLAS.

R. C. Prefect.

L. * S. ALOISIUS TRIPEPI, Secretary.

GENOA.

Doubts concerning the attire of the Canons.

In order that nothing may be discordant with the liturgical regulations

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in the sacred functions performed, the Reverend Canons of the illustrious Collegiate Church of the Most Holy Virgin of the Vines, located in the Archdiocese and city of Genoa, presented the following humble petition:

Most Blessed Father,

The Canons of the illustrious Collegiate Church of Our Lady of the Vines in Genoa, prostrate at the feet of Your Holiness, reverently present:

That their canonical attire consists of:

— a red silk collar;

— a black silk soutane, with a red silk lining at the lower end;

— a cassock;

— a red silk cope in summer, and a red woolen cope in winter;

— a red silk biretta (with a hood) from Easter to All Saints' Day, and a red woolen biretta with ermine trim from All Saints' Day to Easter.

[*Latin ed. p. 566*]

566 FROM THE SACRED CONGREGATION OF RITES: Concerning the matter of vestments, it is decreed that these garments are to be used only in the principal solemnities, functions, and processions; and concerning ordinary feast days and weekdays, the following doubts arise: 1. Whether, in order to fulfill the obligations of the choir, these vestments must be worn on ordinary feast days and weekdays. 2. To the extent that the question is negative, whether the rocchetto and cappino must be worn? 3. To the extent that the question is negative, whether it suffices to wear only the rocchetto? These matters, having been faithfully presented to me as follows, the Sacred Congregation of Rites, after due deliberation, has decided to respond as follows. To the first question: Negatively. To the second question: Affirmatively. To the third question: Provision is made in the second response. And thus it has been decreed and it is to be observed. March 15, 1895. C. CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation of Rites. L. * S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation of Rites. OF THE ORDER OF SAINT BENEDICT. GALLIC CONGREGATIONS. Doubts concerning the Feast of the Dedication of the Church. The Reverend Father Francis Chamard, Prior of the Monastery of Saint Maur at Glanafoliensis, in the Diocese of Angers, requested of the Sacred Congregation of Rites a declaration concerning the following doubts, namely: 1. Whether monks of the Order of Saint Benedict, who reside in a canonically erected monastery under the title of a simple priory and under the jurisdiction of the principal monastery, but located in another diocese and outside the episcopal city, and not yet in a consecrated church, are obliged to celebrate annually the Feast of the Dedication of the church of the abbey, under whose abbot they are, as is prescribed in the calendar approved by the Holy See; and to the extent that the question is negative. 2. Whether said monks are obliged to celebrate, as almost all the dioceses of France do,

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by virtue of the indult of Cardinal Caprara, on the first Sunday after the Feast of All Saints, the Dedication of all consecrated churches?

[*Latin ed. p. 567*]

FROM THE SACRED CONSTITUTION 567, 3. But rather, are they to be held to celebrate no feast of the dedication of churches? The Sacred Congregation, after mature deliberation on the matters proposed by the undersigned Secretary, decided that answers should be given as follows: To I. Negatively. To II. Affirmatively. To III. Provision is made in the foregoing. And thus it was written, and it is commanded to be observed. March 15, 1895. CAIETANUS CARD. ALOISI - MASELLA, S. R. C., Prefect. L. S. ALOISIUS TRIPEPI, S. R. C., Secretary.

DECREE. OF NAPLES, or LYCIUM. Concerning the beatification and canonization of the Venerable Servant of God, Bernardinus Realini, priest, of the Society of Jesus.

ON THE QUESTION: Whether, with the approval of virtues and the safety of the process, it is possible to proceed to the solemn beatification, given two Venerable miracles, of the Venerable Servant of God, Bernardinus Realini, a most outstanding ornament of the Society of Loyola, who excelled so much in doctrine, in integrity, and in gravity, that he presented himself as a new and absolute example of virtue. Therefore, without any waste of time, he was entirely devoted to the good of souls and the growth of religion, and throughout his life, he increased in the gifts of divine grace, by which he not only obtained the highest praise from Pope Paul V and from the entire Catholic world; but he also often attracted to his service those who were enemies of the Church, to such an extent that they could neither dare nor be able to contradict his outstanding wisdom, drawn from the angelic books of Aquinas, nor his singular piety. From the year 1616, when Bernardinus, freed from earthly things, ascended to the heavens, it is truly wonderful how, with the very forces taken from him by death, he extended...

[*Latin ed. p. 568*]

568 FROM St. C. The fame of sanctity, which had steadily grown with his life and actions, was so widespread, and accompanied by such heavenly wonders, that the cause for his Beatification and Canonization was immediately begun before the Congregation of Sacred Rites, based on most auspicious principles. Indeed, through the passage of time, with legal proofs duly presented and diligently examined, it was determined that the Most Blessed Leo XII, having finally removed the secular delays, solemnly confirmed the heroic virtues attained by Realini, by decree issued on the eve of the Kalends of June in the year one thousand eight hundred and twenty-eight. Then, by another decree, issued on the Ides of November in the year one thousand eight hundred and ninety-four, the Most Holy Pope Leo XIII,

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with supreme authority, formally declared that two miracles, worked by God at the intercession of the Venerable Bernardino, had indeed occurred. Therefore, in order that the cause, already so well prepared, might receive the most desired conclusion, and that the light of all his virtues might be readily available for imitation, nothing remained to be done except to resolve the doubt as to whether the Venerable Servant of God would safely be reckoned among the Blessed in Heaven. This purpose was presented by the Most Reverend Cardinal Camillo Mazzella, in place of and acting on behalf of the Most Reverend Cardinal Caietan Aloisi-Masella, Prefect of the Congregation of Sacred Rites and Relator of the Cause, at a general meeting before the same Most Blessed Father Leo XIII, last year, on the eve of the Nones of December, convened in the Vatican. And all the Most Reverend Cardinals, as well as the Consultor Fathers, with unanimous affirmation, expressed their assent. The Most Holy Pope, having considered the opinions of all, and deeming the matter to be of the utmost importance, wished to remind everyone to offer fervent prayers, which might bring heavenly light and help. But today, on this day which is celebrated as the feast of the Annunciation of the Lord to the Most Holy Virgin Mary, and with the prayers of the people of Lecce, and of the entire Society of Jesus, having been fulfilled, in order to obtain a strong and timely protection, which the Church so greatly needs, he approached this Vatican hall, offering a mystical and unbloody sacrifice, and, seated on the papal throne, he ordered the Most Reverend Cardinal Caietan Aloisi-Masella, Prefect of the Congregation of Sacred Rites, and Promoter of this Cause, and also the Reverend Father Augustine Caprara, Promoter of the Holy Faith, to come with me, and with the undersigned Secretary; and to—

[*Latin ed. p. 569*]

According to the regulations of the Sacred Congregation, it was decreed: That the proceedings may proceed towards the solemn Beatification of the Venerable Servant of God, Bernardine Realini. And this Decree was to be recorded in the public records and in the Acts of the Congregation of Sacred Rites, and it was ordered that Apostolic Letters, in the form of a Brief, concerning the Beatification to be celebrated at any time, should be issued, on the eighth day before the Kalends of April, in the year one thousand eight hundred and ninety-five. C. CARD. ALOISI - MASELLAS. Reverend Prefect. L. jjt S. ALOISIUS TRIPEPI, Secretary. DECREE. OF Naples. Concerning the Beatification and Canonization of the Venerable Servant of God, Vincent Romano, Parish Priest of the town of Herculaneum, in the Archdiocese of Naples. REGARDING THE QUESTION: Whether it is established that the Theological Virtues of Faith, Hope, and Charity in God and in one's neighbor, and also the Cardinal Virtues of Prudence, Justice, Temperance, and Fortitude, together with their associated qualities, were present in a heroic degree, in the case and with respect to the matters under con-

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sideration? The Church justly and deservedly glories in the fact that, in the Venerable Vincent Romano, that which was supremely attributed by Christ as a testimony to good pastors has shone forth in a remarkable way. Indeed, he, born in the town of Herculaneum in the year one thousand seven hundred and fifty-first, having been raised in a family devoted to religion, was received into the Archdiocesan Seminary for his piety, and subsequently, having faithfully observed the laws of the canons, he was raised to the priesthood, and in him, there constantly shone forth the excellence of virtues, by which he was chosen as an example to others, before he was appointed to the office of pastor, for almost thirty years, not without the counsel of God. For there is nothing more important for the Providence of God and for religious men, and for the civil well-being, than to raise up such pastors, especially in times when the Church is most afflicted, who, having entered into the footsteps of the true Shepherd, Christ Jesus, and having devoted themselves to their duties, contribute to the glory of God and to the salvation of souls.

[*Latin ed. p. 570*]

570. Many suffer from the rigor of the established order. Among these, the Venerable Vincent of Rome deserves to be recognized for his outstanding service. For, despite the harsh injustices of the times, he never abandoned the ranks of Christ's soldiers, but, seeking not his own interests and almost forgetting himself, through his sermons and writings, through his constant prayers to God and the Blessed Virgin, through his remarkable virtues, especially patience, charity, and contempt for worldly things, he strove to preserve the faith and integrity of morals in the flock entrusted to him, and to lead those who had strayed back to the path of salvation and to draw them closer to the love of heaven. Having undertaken a great work and devoting all his talents to it, so that the flock might flourish in every way, he allowed himself no human comfort; and, lest he should be distracted from the divine matters by the solicitations of the Christian people, he avoided all unnecessary conversation, spending the nights in silent contemplation. Entirely devoted to the honor of the Church, he sought to overcome every difficulty, to extend the glory of God far and wide, and was not swayed by the applause of men or the criticisms of the envious. As a result, he endured countless hardships, and was brought to the brink of death on several occasions, but he always persevered with a strong and steadfast spirit. Having thus fulfilled his duties, his labors made him all the more venerable, and, upon finally achieving victory, his reputation for holiness was such that it was widely believed that God himself had bestowed upon him many graces, not only during his lifetime, but also after his death, when, having completed his eightieth year, he peacefully departed in the Lord, and heavenly miracles were increasingly attributed to his intercession. This led even Pope Pius VIII and Pope Gregory XVI to

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hold him in the highest esteem and to call him a great servant of God and a saint among the priests. It is truly remarkable how the desire grew day by day that the venerable Vincent of Rome, a model of sanctity, should be presented to the faithful, and that a new patron should shine forth for all, and especially for those engaged in the most difficult tasks, through his vigilant care. Therefore, a few years after his blessed death, with great joy and auspicious omens, it was earnestly considered to bestow upon him the solemn honors of the celestial realm. And, in accordance with the established procedures for investigating his life and works, diligent inquiries were made to conform to the legal requirements.

[*Latin ed. p. 571*]

According to the regulations of the Sacred Congregation, number 571, and having fulfilled all other prescribed requirements, the Sacred Congregation began its examination of the virtues. Therefore, this matter was discussed in three sessions: the first on the Ides of August in the year 1839, in the house of Cardinal Raphael Monaco in Vaux, the Bishop of Ostia and Velletri, and the Relator of the Cause; the second in the Vatican Palace on the IV Ides of July in the year 1839; and the third, finally, in a general meeting held there on the day before the Nones of December in the year 1844, before the Most Holy Pope Leo XIII. In this meeting, Cardinal Camillus Mazzella, in place of Cardinal Monaco in Vaux, proposed the following question for discussion: Whether it can be affirmed that the virtues of Faith, Hope, and Charity, both in God and in neighbor, as well as the Cardinal virtues of Prudence, Justice, Temperance, and Fortitude, and those attached to them, were practiced by the Venerable Servant of God Vincent in Rome, in a heroic degree, in every circumstance, and with such effect? And all those present, the Cardinals and Consultors, gave their opinions; and the Most Blessed Pope Leo XIII, having heard the opinions of all, although he believed that Italy had presented a distinguished example of piety from the secular clergy in Vincent of Rome, nevertheless he refrained from expressing his opinion, and, in order that prayers might precede this matter of such importance, so that greater help might be requested from the heavenly light, he advised all to pray.

On this day, dedicated to the solemn celebration of the Annunciation of the Most Holy Virgin, after receiving the Eucharistic Host, and entering this Vatican hall, seated on the Papal throne, the Cardinals Caietan Aloisi-Masella, Prefect of the Sacred Congregation, and Camillus Mazzella, in place of Raphael Monaco in Vaux, the Promoter of the Cause, together with the Reverend Father Augustine Caprara, Promoter of the Holy Faith, and myself, the undersigned Secretary, and those present, solemnly and duly declared: That it can be affirmed that the virtues of Faith, Hope, and Charity, both in God and in neighbor, as well as the Cardinal virtues of Prudence, Justice, Temperance, and Fortitude, and those attached to them,

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were practiced by the Venerable Servant of God Vincent in Rome, in a heroic degree, in every circumstance, and with such effect. Furthermore, this Decree was ordered to be published and recorded in the Acts of the Sacred Congregation, on the eighth day before the Kalends of April, in the year 1845.

C. CARD. ALOISI-MASELLA, Prefect.

L. S.

S. ALOISIUS TRIPEPI, Secretary.

[*Latin ed. p. 572*]

APPENDIX V. DECRETALS OF THE APOSTOLIC SEE; WHICH HAVE LONG BEEN ESTABLISHED OR WHICH HAVE RECENTLY BEEN ISSUED CONCERNING THE MODERATOR OF THE EPHEMERIDES. Encyclical Letter of the Sacred Congregation for the Propagation of the Faith, 1867, Addressed to the Delegates and Representatives of the Oriental Churches. It is declared that the pontifical constitutions against clandestine sects also apply to the Orientals. The solicitude of the Roman Pontiffs has not failed to reprehend, condemn, and restrain with the most severe penalties those clandestine sects, wherever they have arisen to the detriment of religion, the state, and society. And such is the nature and gravity of the matter, and such is the tenor of the apostolic constitutions, that it is by no means doubtful that the aforementioned Popes intended to bind all and each of the faithful by them, without any distinction of place, time, nation, or rite. Furthermore, the Most Holy Congregation for the Propagation of the Faith did not fail to inform the prelates of the Oriental Churches of these pontifical decrees, as is sufficiently and abundantly demonstrated from the archives of the same Sacred Congregation. Now, since this same social scourge daily increases in this harsh age, does not confine itself to the borders of Europe, and has even extended to the regions of the East, infecting them as well, it was certainly with greater concern that this Most Holy Congregation for the Propagation of the Faith, entrusted with the affairs of the Oriental Rite, sent, in various of their languages, an allocution delivered by His Holiness Pope Pius IX, of blessed memory, in the Consistory on September 25, 1865, for the information and instruction of the Churches of the Orient. Subsequently, certain doubts arose among the Orientals, and the Apostolic See was even asked how confessors should act, especially with those who have outwardly joined these condemned sects, but have not yet been bound by the sacrilegious oaths of the same. These matters, having been brought before a general Congregation of the Most Eminent Cardinals of the Holy Roman Church, who are the general inquisitors against heretical perversity, it was declared, with the approval of His Holiness, that the Orientals are included in the pontifical constitutions promulgated against the aforementioned sects, even with regard to the penalties prescribed

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therein: and thus, the aforementioned doubts were removed.

[*Latin ed. p. 573*]

APPENDIX V. 573 It has been deemed necessary to transmit certain decrees to the prelates of the Churches, concerning matters already addressed by the Apostolic See. While these actions and decrees are undertaken to protect the universal Church from the most grievous harm caused by Masonic sects, provision has also been made to ensure easy access to mercy and forgiveness for those who repent. It is known that the censures and penalties contained in the aforementioned constitutions are reserved solely to the Roman Pontiff, so that, apart from Him, no confessor, or prelate of any order, rite, or dignity, even if patriarchal, can validly and lawfully, outside the article of death, absolve the penitent. Therefore, the Most Holy Father, Pope Pius IX, of blessed memory, grants to Your Eminence the faculty, valid for five years, to absolve from ecclesiastical censures and penalties those who have, either by name or by favor, adhered to or supported forbidden Masonic, Carbonari, or similar sects, provided that they have completely separated themselves from the respective sect and have abjured it; that they have delivered to the confessor, to be carefully transmitted to the Ordinary, any books, manuscripts, or symbols pertaining to the sect, if they retain any; and that they have exhibited true signs of repentance: with the firm obligation to denounce members of the sect, or at least the leaders; with the imposition of salutary penance appropriate to the gravity of the offense, along with frequent sacramental confession, and other penalties as may be prescribed by law. However, this faculty, as mentioned above, is valid only for five years. Your Eminence may, for matters of conscience, exercise this power yourself, or through your spiritual general vicar, even outside of sacramental confession, for the flock entrusted to you, and only within the boundaries of your diocese; and this is done with the special authority delegated by the Apostolic See, to be exercised in each case. Furthermore, Your Eminence may, if you deem it fitting, habitually communicate this aforementioned faculty, for matters of conscience, to the vicars forane established throughout the diocese; who, however, will not be able to exercise it except in the act of sacramental confession. To other confessors, when they have recourse to you or to your aforementioned general vicar in particular cases of penitents, you will be able to grant them the use of this faculty, as explained above, and in the act of sacramental confession; unless, perhaps, for particular cases, you judge it appropriate to delegate this power to certain confessors for a time, as you shall determine. You will diligently instruct those confessors to whom you have habitually granted this power, or for a certain time as mentioned above, not to presume to

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manifest it to anyone, unless necessity or utility requires it.

[*Latin ed. p. 574*]

APPENDIX V. Decree of the Sacred Congregation of the Holy Office, January 12, 1870. – Concerning the Fenians. Since some have doubted whether the society of the Fenians is considered to be among the societies condemned in the Pontifical Constitutions, the Most Holy Pope Pius, by divine Providence, Pope IX, after careful deliberation with the Most Eminent Cardinals, in order to prevent the heretical perversion, throughout the Christian republic, of the Inquisitors General, lest the hearts of the faithful, especially the simple, be turned away with a clear distinction of souls, adhering to decrees already issued by the Sacred Universal Congregation of the Inquisition in similar matters, especially the decree of February 5, 1865 (1), decreed and declared that the American or Irish society called the Fenians is included among the societies prohibited and condemned in the Constitutions of the Supreme Pontiffs, and especially in the most recent document issued by the same Society on the fourth day before the Kalends of October, 1869, beginning with "Apostolicae Sedis" – in which, under number 4, those are declared subject to the sentence of excommunication, reserved to the Roman Pontiff, who "give names to the Masonic sect, or the Carbonari, or other sects of the same kind, which plot, openly or secretly, against the Church, or against legitimate authorities; as well as those who give any kind of favor to such sects; and those who do not denounce their hidden leaders and chiefs, until they have denounced them." And He commanded that Bishops should respond to any requests made to them. From the Instructions of the Sacred Congregation of the Holy Office, 1871. – (To the Archbishop of Corcyra). It is not permitted for heretics to be godparents in the administration of Baptism, etc. 1. In the administration of the Sacraments of Baptism and Confirmation, heretics or schismatics, neither by themselves, nor by a Catholic proxy, neither alone, nor with Catholics, may lawfully perform the office of godparents; nor may Catholics perform that office in the same Sacraments administered according to a non-Catholic rite; thus has this Apostolic See constantly held. Therefore, it will be your duty, especially through the efforts of the parish priests, (1) From the decree of July 5, 1865. "Concerning the fraternity or society of the Fenians, or 'Fenians,' and concerning another society under the name of Saint Patrick." To the Bishops of "North America, the decree of August 5, 1846." The decree of August 5, 1846 states: "All secret societies of which mention is made in the Pontifical Constitutions are to be understood as those which, whether they demand or do not demand from their adherents an oath to keep secrets,

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oppose the Church or the government."

[*Latin ed. p. 575*]

APPENDIX V. 575 That the abuses prevalent in this matter may be diligently and prudently corrected, little by little, as you already hope.

2. If, at times, necessity compels Catholics to attend the funerals of non-Catholics, it must be carefully noted that this is only permissible whenever it is a matter of fulfilling a material presence, for the sake of civil duty, from which Catholics cannot be excused without serious harm or danger; and provided that in no way do they participate in their rites and sacred ceremonies of any kind. With these conditions observed, the custom of attending the funerals and burials of non-Catholics, if at times it cannot be easily tolerated, lest hatred and animosity arise between Catholics and non-Catholics, may be permitted. S. C. S. Officii, 14 January 1874. – (To the Vic. Ap. Columben., Ceylon). Regarding the burial of bodies with heretics and regarding the celebration of marriages. The faithful are to be admonished not to offer prayers during the burial of bodies together with heretics and schismatics, nor to throw earth upon the bodies already placed in the grave, which is most reprehensible, especially in clerics. However, in order that the faithful may conduct themselves properly and lawfully when attending mixed marriages, or even the funerals of schismatics or infidels, when necessity compels them to do so, or to attend their funerals, certain resolutions are appended which must be strictly adhered to in similar circumstances. Questions proposed: 1. Can heretics, schismatics, and infidels be invited to attend the weddings of Catholics, or even mixed marriages, which are lawfully contracted? 2. Can Catholics attend in any way the weddings of heretics, schismatics, and infidels, or even those weddings which are unlawfully contracted between a Catholic party and another party belonging to the aforementioned sects, whether the marriage is valid or invalid?

Answers: 1. It can be tolerated, provided there is a reasonable cause, and provided that no participation in the sacred rites takes place, and that scandal is not to be feared. 2. As a rule, no; however, it can be tolerated that Catholics attend such weddings, solely for the sake of civil duty, provided that scandal is avoided, and any danger of perversion, as well as contempt for ecclesiastical authority.

[*Latin ed. p. 576*]

576 APPENDIX V. S. C. S. Office of August 1, 1855. — Letter from Oporto, Aloysius. Regarding those who have given their name to the Masonic sect, there are various doubts. We are at this moment in conflict with the Freemasons... Here are the instructions which I have given to my clergy; I submit them respectfully to Your Eminence, and I desire that she may approve them. I have ordered the following: 1. That any person who has been as-

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sisted by a priest, or who has requested the assistance of a priest at the hour of death, receive ecclesiastical burial. This is the first rule, and I believe that it is impossible in this country to act otherwise. The fact of having sought reconciliation with the Church, even at the hour of death, must be considered a sufficient reparation to authorize ecclesiastical burial, and I will not dare to act otherwise. I therefore hope that Your Eminence will approve this first rule. 2. That if the body of a deceased Mason is brought to the Masonic lodge, it should not be received in the church, but rather that it should be rigorously denied all prayer and ecclesiastical ceremony. 3. That in order to admit a Freemason to the Holy Communion, the clergy must strictly demand that he abandon the Masonic society forever, which the Mason can do silently by ceasing to attend their lodges and by ceasing to help them to maintain themselves. 4. That with regard to the Sacrament of marriage, the clergy should act with Masons who do not wish to abandon their criminal fraternity, as they act with Protestants in the case of mixed marriages. I do not see the possibility of acting otherwise, and I hope that Your Eminence will approve all these instructions which I have given to my clergy. Your Eminence knows that there exist in this diocese laws which render marriage valid for people of the state, and if we place too many obstacles to ecclesiastical marriage, the spouses will be content with the civil marriage alone, and will thus live in concubinage. But here is a very serious question which I submit to the Holy See, humbly praying that it grant me an answer for the guidance of my conscience. It concerns the Freemasons. The Bulls of the Most Holy Fathers which excommunicate Freemasons have never been promulgated here in a solemn manner, any more than in England; but as a general rule, my clergy have demanded that, when a Mason presents himself at the tribunal of Penance (a thing exceedingly rare), he abandon Freemasonry. However, one of my priests affirms that in France, confessors...

[*Latin ed. p. 577*]

APPENDIX V. 577. Masons are admitted to the holy Table without being asked what they are, provided that they are of good faith: and this priest acted in this way in Mauritius in some cases. Now, the Holy See responded on July 1, 1837, and on June 27, 1838, to the Apostolic Vicars of England that the absolution given to Masons in any part of the world is illicit and invalid. One of our Masons in Mauritius, who had received Holy Communion for several years, and who, I suppose, was in ignorance and good faith, having learned that Masons are excommunicated, and that he must leave them if he wishes to receive the Holy Eucharist, preferred Masonry to religion, and this year he did not receive Holy Communion at Easter. Is the absolution given to him valid or invalid, when he was ignorant of the evil of Masonry? There are a few other people, but not many, who are in the same position. I beg Your Eminence to be so kind as to give me a decision, and a solution

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to this case.

R. Eminentissimi DD. ordered that I should be answered by the Sacred Congregation of the Propagation of the Faith, according to the attached instruction, and the following decrees were given: On Thursday, December 5, 1840. – Regarding the question: "Whether it is permissible to celebrate the funeral rites and to grant ecclesiastical burial to those who, before their death, receive the Sacraments, but who have given their name to the Masonic sect, and who retain the emblems of that sect in the coffin?" The Eminences decreed that the answer is: "Affirmative, provided that the form of the decree of Innocent III, Chapter *A nobis de sent. excomm.*, is observed, and provided that the application of emblems was not requested by the deceased after receiving the Sacraments, or if it was requested by the deceased, it has been revoked, and removed immediately upon knowledge of their application, and in any case, before the association of the body." The confessors of the place should be warned of the obligation to demand a retraction before sacramental absolution.

On Friday, July 5, 1837 – Regarding the question: "Whether, in any region of the world, to men who are members of a 'sworn society,' if they repent of their oath, a confessor may licitly or validly administer sacramental absolution, before they absolutely and positively abandon that condemned society forever?" The Sacred Congregation of the Holy Office responded: "According to what has been explained, it is not permissible." But, since the question arose: "Whether those words 'it is not permissible' include in the case explained even the invalidity of the absolution?" On Thursday, June 27, 1838, the Eminences said that the answer should be: "Affirmative, according to the Apostolic Constitutions."

Regarding the question of the validity of the absolution given to a person who is a member of a society that is part of the Masonic sect, and who is ignorant of the wickedness of this sect, on Thursday, July 2, 1845, the Eminences decreed: "The Apostolic Vicars should privately, either by themselves, or by others who are well-disposed, in the name of the Holy See, instruct the confessors to seriously..."

[*Latin ed. p. 578*]

APPENDIX V. Let them admonish their penitents, lest they give the name to secret societies of stonemasons and other similar clandestine associations, or presume to attend or encourage their gatherings; and let them deny sacramental absolution to the obstinate, while having the power to truly absolve those who, having incurred excommunication, genuinely repent.

INSTRUCTION — My Most Reverend and Most Reverend Lord — From the letter which you sent last year to the Sacred Congregation of the Propagation of the Faith, it is clearly evident how zealously you strive, both in safeguarding the salvation of the flock entrusted to you, and in maintain-

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ing the observance and integrity of the Holy Canons. Indeed, you rightly rejoice in the spiritual growth of your diocese; for which this Supreme Congregation offers much praise to the Lord; then you lament the difficulties of the times, and the disturbances and scandals caused by those who stubbornly adhere to clandestine societies, which have been repeatedly condemned by the Apostolic See, and who seek to violate the salutary laws of the Church. But since it is the perpetual vicissitude of the Church militant, as if Peter's boat is sometimes tossed by waves, and sometimes enjoys tranquility, a most excellent opportunity presents itself for those who lead Christ's flock to demonstrate pastoral zeal, so that they may embrace what prudence dictates is permissible and beneficial, and in doubtful matters and difficult situations, they may seek help from the Apostolic See, which provides truth to those who ask. Therefore, with the best of intentions, the doubts recently raised, concerning ecclesiastical burial, whether it should be granted or denied to those addicted to proscribed societies, concerning the participation of the mind, and especially concerning the Sacred [matter], have been brought before this Supreme Congregation. Although from the responses given by the same Sacred Congregation, and from the Apostolic Constitutions wisely published on this matter, it is abundantly clear how these doubts can be resolved, nevertheless, it is nevertheless ordered that certain things be added directly, both for a fuller explanation thereof, and furthermore, so that others who labor with you in cultivating the Lord's field may have a standard to follow with a completely innocent conscience and should. Everyone knows the most serious damage that clandestine societies have inflicted, not only on the temporal tranquility, but also on the true salvation of souls, in recent years. "From these," as Leo XII says, "arise the most grievous calamities, by which the Church is almost everywhere afflicted, and which we cannot mention without sorrow, indeed without grief (1)." Therefore, as you well know, the Apostolic See, in its Encyclical (1) Bulla Quo graviora, (March 15, 1825).

[*Latin ed. p. 579*]

APPENDIX V. 579 You state that, through doctrine and pastoral guidance, you have never ceased to warn the flock of Christ against such societies, and to condemn, with supreme authority, those sects which threaten the ultimate ruin of the Church, inflicting, moreover, the most grievous penalties, and, above all, reserving the greater excommunication, from which (1) no one, by anyone, except the Roman Pontiff, and only when at the point of death, can obtain the benefit of absolution, unless by his own act, without any further declaration. Since this is so, there can be no doubt that those who transgress will incur this most grievous penalty. For those who, after having knowledge of these constitutions, either dare to give a name to proscribed societies, or utterly refuse to withdraw from them, clearly do not heed the Church in a matter of great

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importance, and despise its authority; therefore, they are justly punished, and, according to the judgment of the Supreme Shepherd of Christ, they ought to be considered as heathens. The most holy Cyprian calls this most grievous spiritual penalty the "spiritual sword" (2) by which the proud and rebellious are slain. Moreover, it results in the deprivation not only of communion in spiritual goods, but, if the contumacious and obstinate should die, even of ecclesiastical burial. But since the Church of Christ, instructed by the spirit of its divine Founder, desires nothing more than that the contumacious, having laid aside their stubbornness, may finally return to its bosom, therefore, just as they can, even at the point of death, return to the grace of God through contrition, and attain to internal communion with the mystical body of Christ, so too, if they give signs of repentance (which are commonly enumerated by doctors) (3), they can also, after death, be absolved from ecclesiastical censure, and, if the circumstances warrant it (4), even be granted ecclesiastical burial, as Innocent III clearly declares in chapter *A Nobis est saepe quaesitum de sent. excom.*, where he also establishes the manner in which those who, as it is believed, have obtained grace with God through contrition, are to be absolved from the bond of excommunication, through external signs of repentance. These [principles] also apply if the deceased body has been brought into the hall of the Freemasons (commonly called *Logiaboge*). Indeed, if this happens against the will of the deceased, it is undoubtedly to be denied ecclesiastical burial, since, as is said, he has died obdurate. But if, through the perverse actions of others, it occurs contrary to the will of the deceased, who, in fact, died with true signs of repentance, he should not be deprived of the benefit of absolution, nor of ecclesiastical burial (1) Thus, Clement XII in the Bull *In eminenti*; Benedict XIV in *Providas*; Pius VII in *Ecclesiam*; Leo XII in *Quo graviora*; Pius X in the Encyclical *Qui pluribus*. (2) St. Cyprian, Epistle 62. (3) Fagnanus, title 28, *De sepultura*, nos. 12, 13; Ferraris, *V. Excomm.* (4) Chapter *Ad audientiam*, title *De torneamentis*. Benedict XIV, *De Syn.*, book 13, chapter 18, no. 10.

[*Latin ed. p. 580*]

580 APPENDIX V. burial, as clearly emerges from the doctrine recently expounded, and from the decree (1) of this Supreme Congregation. Although from what has been said thus far, a solution readily flows forth concerning those matters pertaining to the participation in the Sacraments, and concerning whether or not unbaptized masons and others of this kind can be admitted to absolution in the Sacrament of Penance, and to Holy Communion, it will nevertheless be of no small benefit to add something more explicitly. But so that those things which are prescribed by the sacred canons as a general rule may not be passed over in silence, the Roman Pontiffs who hold the place of Christ on earth, in the aforementioned consti-

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tutions, the knowledge of which has now been widely disseminated, teach and frequently declare with clear words that those who are under a lata censura cannot obtain the benefit of absolution, except either at the point of death or through the benignity of the Apostolic See, and in both cases it is stipulated that the confessor should not grant absolution unless the person has first made a retraction, and has given certain signs of repentance (2). Furthermore, there is a most serious reason derived from the oath sworn by the masons, which is not only condemned by ecclesiastical law, but is utterly and naturally damnable; "For what?" says Leo XII (3), "is it not a sacrilege to swear an oath, which, when pronounced in justice, is like a bond by which one obligates oneself to injustice, and to despise the authority of those who, whether they govern the Church, or the legitimate civil society, have the right to know those things by which the safety of those things is contained? Is it not most wicked and most unseemly to call upon God Himself as a guarantor?" Rightly do the Fathers of the Church declare and the Council of Lateran III, in Canon 3: "For oaths, or rather perjuries, are not to be made, which are contrary to the advantage of the Church and the institutions of the Holy Fathers." And intolerable is the impudence or madness of those men who, not only openly and in public writings, but also in their hearts, deny God, and yet dare to demand an oath from all those whom they draw into their sects." Therefore, when, through the Apostolic Indult, the power was granted to confessors in Ireland and England to absolve penitents who had adhered to condemned societies, these three things were wisely prescribed: 1. That confessors should seriously warn their penitents not to give their names to clandestine associations, nor to presume to attend or favor their meetings; 2. That they should deny sacramental absolution to the obstinate; 3. That those who are truly repentant should be absolved from the incurable excommunication (1) Decree of Feb. IV, Dec. 2, 1840. (2) Apostolic Constitutions and decrees. (3) Quo graviora.

[*Latin ed. p. 581*]

APPENDIX V. 581 absolverint. And in this case alone, a suitable power has been granted (1), just as it is granted to the confessors of your diocese, not otherwise than by the Apostolic See. Since these things are so, everyone can easily understand that no one among the Freemasons can obtain absolution, of which we are speaking, unless he has abandoned his obstinacy, and has completely forsaken secret societies; nor can anyone be absolved by the confessors, unless he truly repents, and that either at the point of death, or outside of it, through the benignity and mercy of the Apostolic See. And let us not linger on the doubt, if, indeed, someone might be laboring with such good faith and ignorance, that although inscribed among the proscribed societies, he might nevertheless be considered immune from the latae sententiae censure, and therefore validly absolved, even if he has not issued any retraction, because he, having abandoned the societies in

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good faith, has not even considered the dangers and errors with which secret societies are rife. For a general rule can be given on this matter; it is necessary to diligently examine the particular circumstances of the case, and to take as a standard for judgment the teachings of approved authors, provided that those things which are decreed in the Apostolic Constitutions, with such gravity of opinion, are kept in mind. Moreover, this will not happen henceforth, since the confessors are bound by the precept of the Apostolic See to warn the penitents not to give their name to secret associations, or to presume to favor them, and they must demand a retraction before granting absolution, as is most clearly stated in the decrees which are being sent to you. And if they do not repent, they must be considered entirely unworthy to be absolved in the Sacrament of Penance; they are, with even greater reason, to be excluded from the Holy Eucharist: for how can those be admitted to the Sacrament of union and peace, who now, sometimes secretly, sometimes in writing, and sometimes openly, wage war against Christ and His Church, and strive to utterly destroy its dogmas and tranquility? As for the external manner of acting, these things are applicable when dealing with those who are manifestly enrolled in condemned societies: for, as you well know, those who are hidden, if they were to publicly receive the Eucharist, would not be excluded, since even the Lord, the Prince of Pastors, did not deny the Sacrament of His Body to the betrayer in the Last Supper. Finally, with regard to marriage, in which one of the parties is attached to secret societies, since the Apostolic See has not yet issued any general decree on this matter, it is necessary that pastors act cautiously and prudently, and they should rather decide in particular cases what they judge to be more expedient in the Lord, than to decree anything by a general rule. Certainly, the actions of a good pastor will be, as far as possible, (1) Decree of the year 1840.

[*Latin ed. p. 582*]

382 APPENDIX V. and scandals may arise, such marriages ought to be prevented (1). Confessors, especially in the Sacrament of Penance, ought to seriously warn penitents, through instruction and counsel, and through exhortation, not to expose themselves and their future spouse to such danger, since nothing good or blessed can be expected from one who so unjustly despises God and His laws. For, as you explain, since some, perhaps carried away by passion, neglected the presence of the parish priest and witnesses when the marriage was contracted only civilly, and thus lived in concubinage (which is true, as is known, where the Decree *Tametsi Concilii Tridentini* is in force), therefore, in urgent cases, as has been said, you have the power to decide on matters that you judge to be more pleasing to the Lord. Finally, it must never be forgotten that the most wise institutions of the Apostolic See, which, as a rule of truth for all pastors of the Church, offer the same clear examples of pastoral kindness and prudence

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to all. And lest they be kept remote, it is better to recall what has been done in recent years regarding this matter: and this all the more, since the doubts about which we have spoken are almost the same as those for which the Congregation was convened from England, Ireland, or whatever other place where this matter was being fiercely debated. After careful investigation, resolutions or decrees were issued, most suitable for clarifying the doubts and for calming the disturbances of minds. After these decrees were transmitted, it was ordered that the bishops and vicars apostolic should privately, in the name of the Holy See, instruct the confessors to carry them out; and sometimes, in order to prevent disturbances from harming the Church, a clause was added that they should abstain entirely from publishing them. Therefore, with all the pastoral prudence you possess, you will privately, in the name of the Holy See, instruct the confessors of your diocese to diligently obey and fully adhere to what is contained in the aforementioned decrees and in this letter, but not to publish them. This Supreme Congregation has great confidence in the Lord that, through such prudent management, and through your outstanding, Most Reverend and Most Reverend Lord, kindness, even the erring, and those abandoned to damnation, may finally be able to hear the voice of the Church and of pastors in a humble and salutary way.

(1) It is better to hear the words of Leo XII. In the Bull *Quo graviora*, the Pope addresses the Catholic bishops: "Let the faithful know through you the deceptions of the sects, and how diligently they must avoid them and their customs. Let them be horrified by the authors and teachers of their perverse doctrine, who mock the most holy mysteries of our religion, and the purest precepts of Christ, and who attack all legitimate authority."

[*Latin ed. p. 583*]

583 APOSTOLIC LETTER FROM HIS HOLINESS, POPE LEO XIII, TO THE ENGLISH PEOPLE, SEEKING SALUTATION AND PEACE IN THE LORD. The illustrious nation of the English people may also receive a sign of our most affectionate will. — We have indeed spoken of this matter in common, in a letter apostolic not long ago addressed to all princes and peoples; but it was greatly desired by Us to express this in Our own words. This desire was fueled by our constant inclination towards your nation, whose affairs speak of illustrious Christian achievements from ancient times; and it was further strengthened by what we have learned in frequent conversations with your people, both concerning the most humane regard of the English towards Us, and especially concerning the fervent zeal that exists here to seek eternal peace and salvation through the unity of faith. — May God be our witness how greatly we hope that Our efforts may contribute something to the preservation and promotion of the supreme cause of Christian unity in England. And we give thanks to God, the most benevolent preserver of life, who has granted us this opportunity, even to

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our own safety, so that we may strive for this. Since, therefore, we place our hopes for the desired outcome in nothing more than in the admirable power of His grace, we have, after careful deliberation, decided to call upon all English people who glory in the Christian name, and to urge them to raise their hearts to God, and to implore His help, which is most necessary for so great a matter, through the constant practice of holy prayers. The charity that we have for you, and the providence of Our predecessors, the Popes, will be evident, especially that of Gregory the Great; whose merits in religion and humanity are rightly and singularly praised among your people. For, as is recounted in the *Monachium*, he was urged by constant thoughts (1) to convert the English Saxons; and although, present circumstances preventing, he could not undertake those apostolic labors in person, but rather, God destined them for greater things, it is truly remarkable with what spirit and constancy he pursued and accomplished this great purpose. For from the very monastic family, which he had so excellently formed in his own home for all instruction and holiness, he sent forth a chosen group, under the guidance of the blessed Augustine, to that land, against the wretched (1) John Diac. in vita eius II, 53.

[*Latin ed. p. 584*]

584 APOSTOLIC LETTER: The messengers of the Gospel bring news of wisdom, grace, and gentleness. Having begun without any human support, and with hope growing amidst difficulties, it now sees and experiences its fulfillment. – This event was announced to Augustine by letter, and he himself, rejoicing, replied: "Glory to God on high, and peace on earth to men of good will: Glory to Christ... through whose death we live, through whose weakness we are strengthened, through whose love we seek brothers in Britain whom we did not know, whom we find through his grace, whom we were seeking without knowing. Who can adequately express the great joy that arose in the hearts of all the faithful, that the people of the Angles, through the grace of Almighty God and the labor of your fraternity, having been freed from the darkness of errors, are filled with the light of the holy faith: that with a pure mind they now trample upon the idols to which they previously succumbed with insane fear? (1) He also congratulated King Ethelbert of Kent and Queen Bertha with benevolent letters, reminding the former of Helen, and the latter of the most pious Emperor Constantine (2); and then he continued to strengthen both and the people with salutary admonitions, and never ceased to provide and increase what remained of their lives with wise institutions. Thus, in the lands of Britain, the Christian name, which had been introduced by the Church itself in ancient times, was spread and vindicated (3), which, having been oppressed by the subsequent occupation of foreign peoples, had declined for a long time, and was happily restored under the auspices of Gregory. These things I wished to recall at the beginning, not only because

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they are excellent in themselves and glorious to the Church of Christ, but also because they will certainly be pleasing to the people of the Angles, for whose benefit these things were accomplished. – But it is truly important to note that the same arguments of Gregory's charity and diligence, transmitted as it were by inheritance, appear in a similar manner in those who succeeded him as Popes. Whether they appointed worthy pastors, or provided for the needs of men (1) Epistle XI, 28, or XI, 58. (2) Ibid. XI, 66, or IX, 60; XI, 29, or IX, 59. (3) Saint Caelestine I played a significant role in this, against the Pelagian heresy which had infected the Britons. Concerning this matter, Saint Prosper of Aquitaine, a writer of the same era, and later the secretary of Saint Leo the Great, wrote in his Chronicle: "Agricola, the Pelagian, son of Severian, the Pelagian bishop, corrupted the churches of Britain with the insinuation of his doctrine. But in response to the actions of Palladius, a deacon, Pope Caelestine sent Germanus, the bishop of Auxerre, in his place, and after driving out the heretics, he led the Britons back to the Catholic faith." Migne, Bibliotheca Patrum, Saint Prosper of Aquitaine, works, volume 1, page 594.

[*Latin ed. p. 585*]

LETTER. APOSTOLIC 585, to the best teachers of divine doctrine, or those who provide the most excellent aids to discipline and exhortation, it has been abundantly and diligently provided by them whatever is needed! Among you, the work was for the strengthening and the fruitfulness of the Church. Such endeavors, in a very short time, bore fruit; for nowhere, perhaps, did the faith take deeper root in hearts, nor did the feelings of piety towards the most blessed See of Peter flourish more strongly. With this, the center of Christian unity, divinely established in the Roman bishops, a close union existed with the English, and this continued throughout the course of ages, with faithful obedience, steadfastly; which is so well attested by so many and so noble monuments, that nothing could be more clearly demonstrated. But in the sixteenth century, during that most grievous tribulation of the Catholic religion throughout Europe, England also received a very serious wound: which, for reasons not unknown, first separated itself from communion with the Apostolic See, and then was led away from that most holy faith, which for many centuries, with great advantage to liberty, it had joyfully embraced. A sad division! which Our Predecessors lamented from the depths of their hearts, and sought by every means to restrain, and to diminish the harmful consequences flowing from it. It is indeed long, and not necessary, to recount the series of events which demonstrated their constant and perpetual concern in this matter. — A most notable and powerful aid was prepared by them, whenever they ordered special prayers for this purpose, so that God might regard England with kindness. To this excellent work of charity, many illustrious men devoted themselves in a special way, namely Charles Borromeo and Philip Neri; and especially

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in the preceding century, that Paul, the author of the Sodality of the Passion of Christ, who, not without a certain heavenly inspiration, as has been shown, persevered in praying before the throne of divine grace, and the more so, as the times seemed less favorable to the desired outcome. — We ourselves, long before we were raised to the highest priesthood, performed the same office of religious prayer for the same purpose, and we did so with great zeal and with great approval; and a pleasant memory of this comes to mind. For when we were in Belgium on a mission, we received from Ignatius Spencer, a most pious disciple of the same Paul of the Cross, an idea from that very Englishman, concerning the propagation of a certain pious society, properly directed towards the salvation of the English.

[*Latin ed. p. 586*]

S86 APOSTOLIC LETTER concerning those who intercede (1). Such a plan, distinguished by faith and fraternal love, scarcely allows Us to express how deeply We are moved and how diligently We have striven to promote it, believing that it will bring great benefit to the English people. The fruits of divine grace, obtained through the prayers of the righteous, were not entirely unknown before that time; but since this holy alliance has been established, they have become more abundant. Indeed, many, even of illustrious name, have responded to the call of God, willingly obeying His command; and this not infrequently through considerable private sacrifices, with a noble spirit. Furthermore, a certain remarkable movement has arisen throughout the land, inclining hearts towards the Catholic faith and institutions; so that a considerable increase has been observed in the esteem and reverence shown to them, as preconceived opinions are dispelled by the pursuit of truth. Considering the progress of these things, We have been convinced, through the favor of the unanimous and fervent supplications of so many to God, that the time has come for the benevolent intentions towards your nation to be more fully revealed, so that the word of God may run and be glorified (2). — Moreover, certain aspects of your civil and social affairs lend support, which, although not directly related to what is proposed, nevertheless contribute, either through the protection of human dignity, or through laws directed towards justice and charity. Indeed, much is being done among you for the cause which they call social, a matter which We Ourselves have addressed in a papal encyclical. Furthermore, societies are wisely established to promote the just advancement and discipline of the working people. Also, with equal zeal and firmness, efforts are being made to maintain religious institutions: for certainly, there is no firmer foundation for the education of youth and the preservation of domestic and civil order. Moreover, in Lodi, many are diligently and earnestly working to curb intemperance, that shameful vice of man, through timely precautions. It is also noteworthy that associations of noble young men are being formed to safeguard proper moral conduct and to show due honor to

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women. For it is to be lamented that opinions concerning Christian conduct (1) For this purpose, he especially suggested the angelic salutation; and he obtained from the solemn assembly of his Order, held in Rome in the year 1857, a special instruction on this matter for all members of the same Order. (2) II Thessalonians III, 1.

[*Latin ed. p. 587*]

APOSTOLIC LETTER 587, containing matters of great importance, as if they were of the opinion that men are not so strictly bound by that precept as women are. — And not without reason do prudent men fear the pestilences of rationalism and materialism, which We Ourselves have often condemned; for by their contagion, whatever authority exists in religion, in studies, in doctrine, and in the conduct of life, is utterly destroyed or greatly weakened. Therefore, they wisely advise those who do not timidly embrace, and even assert, the rights, laws, and documents of God and of His Christ; for in these consists the divine kingdom on earth; from here all power, wisdom, and security are derived. — Moreover, your character and virtue are clearly demonstrated by the multitude of acts of beneficence; concerning old age weakened by infirmity, about abandoned childhood, about perpetual illness, about calamitous poverty, about a virtue in danger, about vice to be corrected, and other similar cares, which the Mother Church has diligently fostered and has never ceased to commend. Nor should the publicly inviolable sanctity of holy days be overlooked; nor that habit of reverence with which the minds of men are led to the divine books. — Finally, to what extent and to what benefit are the power and wealth of the British nation, along with the benefits of humanity and liberty, and with commerce extending to the furthest shores, to be attributed? Yet, from this confluence and activity of praised things, the mind is drawn to the highest principle of all efficiency and the eternal source of all good things; to God, the most beneficent Father to us from heaven. For, unless with a God who is invoked and propitious, these things will truly be, as they ought to be, both privately and publicly beneficial; for blessed is the people whose God is the Lord (1). Thus, a Christian man ought to have his spirit confirmed and strengthened, so that he may place his hope in the divine help that is offered to him through prayer; and thus it happens that something greater and more generous is added to his actions, and the will to do good, as if spurred by a heavenly fire, pours itself out much more abundantly and usefully. For God, having given men the faculty of prayer, has honored and benefited them greatly; and this aid is available to all, and is readily accessible, and to none who approach it with sincerity does it prove fruitless: Prayers are great weapons, great security, a great treasure, a great port, a safe place (2). And if the divine power hears the prayers of those who pray devoutly (1) Psalm 143:15. (2) Chrysostom, Homilies XXX

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on Genesis 5.

[*Latin ed. p. 588*]

588 APOSTOLIC LETTER: Although it is clear that those who hope for things that contribute to the prosperity of this life should expect nothing from Him who is called to eternity, except the attainment of the most excellent of goods which Christ bestowed upon the human race through the sacrament of His mercy, nevertheless, He Himself, having become for us wisdom from God, and justice, and sanctification, and redemption (1), and having most providentially taught all these things, instituted salutary precepts for prayer, and strengthened them with incredible goodness. These things are indeed known to no Christian; yet, they are often not sufficiently recalled by many, nor sufficiently considered. This gives us reason to more strongly encourage the confidence of prayer, renewing the very words of Christ the Lord and the paternal charity. For indeed, these are most weighty and filled with abundant promises: "Ask, and it shall be given you; seek, and you shall find; knock, and it shall be opened to you: for every one that receiveth, receiveth: and he that seeketh, findeth; and to him that knocketh, it shall be opened" (2). These wonderfully illustrate God's provident plan, so that prayer may be both an expression of our needs and a certain means of obtaining those things for which we need. But that our prayers may be pleasing and acceptable to the majesty of the Father, the Son commands us to join and present them with His own merit and in His own name: "And in that day you shall not ask me any thing. Amen, amen, I say to you: if you ask the Father any thing in my name, he will give it you." (3). Furthermore, confirming this with an example of the active benevolence with which parents are animated towards their children: "If you then, being evil, know how to give good gifts to your children, how much more will your Father from heaven give the good Spirit to them that ask him?" (4). Undoubtedly, a great abundance of most excellent gifts is contained in that good Spirit; and within it lies that most secret power of which Christ Himself warned: "No one can come to me, unless the Father, who sent me, draw him" (5). With such a discipline of the institute, it cannot be that minds are not invited, nor impelled, to the salutary habit of prayer; especially if they insist with perseverance and are inflamed with piety, having compared themselves to the example of Christ. He, fearing nothing, lacking nothing, (1) 1 Corinthians 1:30. (2) Luke 11:9-10. (3) John 16:23. (4) Luke 11:13. (5) John 6:44.

[*Latin ed. p. 589*]

APOSTOLIC LETTER 589. Indeed, God, yet He spent the night in prayer (1), and He offered prayers and supplications... with a loud voice and tears (2): and in doing so, He wished to present Himself to the Father as a supplicant, so that He might remember that He was our teacher, as He Himself

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wisely saw, the ornament of your nation, the venerable Bede (3). But nothing more clearly confirms the Lord Christ's instruction and example in this matter than that supreme discourse which He had with His apostles, being close to suffering and death. In which, lifting up His eyes to heaven, with a heart filled with love, He repeatedly called upon the Father, asking and lamenting, that there might be the closest union and permanence among His disciples and followers in truth; and that this might be a manifest sign of His divine mission before the eyes of the nations (4). In this place, the unity of faith and will is most pleasing to us, to which our Redeemer and Master lamented in that supplication: a unity which, moreover, is useful also in civil affairs, both at home and abroad, and which these times, so divided and disturbed, plainly demand. As far as it was in our power, we seem to have neglected nothing that the example of Christ and the awareness of our duty might suggest, by watching over, exhorting, and providing; and to God we offer humble prayers and supplications, that the nations who are divided from the Christian faith may finally regain their former unity. We have affirmed and signified this on many occasions in recent times, and we have instituted measures to bring about more vigorous efforts in this regard. And how happily and blessed we shall be, if, at the time when we shall render an account as shepherds to the Chief Shepherd, it should happen that we may bring to Him not insignificant fruits of those aspirations which we have pursued with Him leading the way! — During these days, we have had a great and hopeful feeling towards the English nation; in which we perceive frequent prayers and more evident signs of divine grace, salutarily moving hearts. It is evident enough that, daily, many communities within it are experiencing either confusion or opposition in the most important matters; that some see the need for firmness against new and varied errors, which depart from the true principles of nature and reason; that the number of those who...

(1) Luc. VI, 12.

(2) Hebr. V, 7.

(3) In eo. S. Ioatm. XVII.

(4) Ioann. XXII, 21.

[*Latin ed. p. 590*]

590 APOSTOLIC LETTER concerning the number of religious and prudent individuals who, with great zeal and dedication, strive to restore the unity of the Catholic Church. We can scarcely express how strongly these and similar endeavors increase the charity of Christ in us; and how earnestly we invoke the abundant gifts of grace from God, so that those infused into minds so disposed may bear the most desirable fruits. For these fruits are, as we all know, to attain unity in faith and in the knowledge of the Son of God (1). We are concerned to preserve the unity of the spirit in the bond of peace: one body and one spirit, just as you have been called

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in one hope; one Lord, one faith, one baptism (2). Therefore, all of you, from whatever community or institution, who are in Anglia and are called to this purpose of restoring this holy unity, our words earnestly implore you. We beseech you, in the name of eternal salvation and for the glory of the Christian name, to offer prayers and vows to the highest Father in Heaven, and to do so without hesitation. From Him, the giver of all light and the sweetest impulse of all that is right, strive to obtain suitable assistance, so that you may fully understand the truth of His doctrine and faithfully embrace the plans of His mercy, through the august intercession and merits of Jesus Christ, in whom we must look to the author of faith and the consummator (3), who loved the Church and gave Himself up for it, that He might sanctify it... that He might present it to Himself as a glorious church (4). Difficulties, if any there are, are not of such a nature that our apostolic charity should be entirely hindered by them, nor that your will should be discouraged. Indeed, it is true that the changes in circumstances and the passage of time have strengthened divisions: but for that reason, should the remedies of reconciliation and peace be rejected by all? Certainly not, if it pleases God. The results of events are to be measured, not only by human provision, but especially by divine virtue and piety. In great and arduous matters, if undertaken with a sincere and good intention, God is present to man, and His providence shines forth all the more magnificently from the very difficulties encountered in the undertakings. Regarding the common hope, the third millennium is not far off, after the apostolic men sent from this city, as mentioned at the beginning, have... (1) Ephesians 4, 15. (2) Ibid. 5-5. (3) Hebrews 12, 2. (4) Ephesians 5, 25-27.

[*Latin ed. p. 591*]

APOSTOLIC LETTER

591. England, having received divine favor, and despising the vain religion of idols, has dedicated the first fruits of its faith to Christ, the God. This is, indeed, a matter worthy of public celebration and thanksgiving, since it has brought to you and will continue to bring a great abundance of blessings and the extension of the name of God through the ages. May this memory inspire, above all, those of upright mind to consider and justly appreciate the faith which was not given to your ancestors in any other way, nor is it given to you now in any other way. For Jesus Christ is the same yesterday, today, and forever, as the Apostle Paul proclaimed (1); and he urges you, fittingly, to remember your fathers, who spoke to you the word of God; and, beholding the outcome of their conduct, to imitate their faith (2). We especially call upon the Catholic brethren and helpers in this great cause in England, whose faith and piety are well known to Us, to diligently consider the dignity and fruitful power of sacred prayer, and to strive with

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all their strength to assist in this endeavor, so that they and you may obtain the mercy of God. For he who prays for his own cause, surely considers the necessity; but he who prays for the cause of others is urged by fraternal love; and it is clear that the prayer which is offered not out of necessity, but which is commended by the love of brotherhood, will receive greater grace from God. This, certainly, has been zealously practiced from the very beginnings of the Church. In this matter, the examples that antiquity has handed down are outstanding for imitation; how those, with inflamed zeal, implored God to grant a docile mind to their relatives, friends, princes, and fellow citizens, so that they might embrace the Christian faith (3).

Furthermore, another matter is joined to this which concerns Us. It has come to Our knowledge that there are here those who bear the name Catholic, but in reality, and in their actions, do not sufficiently demonstrate their devotion; and, especially in large and important cities, there are a great number of people who have not even tasted the elements of the Christian religion, and who, not only do not offer any worship to God, but are immersed in blind ignorance of His justice and goodness. In this also, we must pray and implore God: may He, who alone can, show the ways suitable for healing; may He strengthen the minds and powers of those who are already toiling in this very cause; may He send forth laborers into His harvest.

As We urge this duty of prayer upon Our sons, We must also, at the same time, remind them of the following:

(1) Hebrews Xxii, 8.

(2) Ibid.

(3) St. Augustine, *de dono perseverantiae*, XXIII, 63.

[*Latin ed. p. 592*]

592 APOSTOLIC LETTER: We desire to exhort you, so that you do not allow anything to be desired by you in any way that might hinder the fruit of the petition; and that you may have, as it were, what the Apostle commanded to the Corinthians: Be without offense to the Jews and to the Gentiles and to the Church of God (1). For, besides the virtues of the soul, which prayer itself primarily demands, it is necessary that actions and examples be joined with it, which are consonant with the Christian profession. Examples of integrity and justice, of mercy to the poor, and of penance, of domestic concord and of modesty, are the best recommendations of those who pray. Those who piously observe and fulfill the commandments of Christ, it is certain that divine generosity will respond to their prayers, according to that promise: "If you abide in me and my words abide in you, you shall ask whatever you will: and it shall be done unto you" (2). – And this is what we especially urge you to desire in prayer, joined with us in the present time, that you may receive citizens who are

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united brothers in the fullness of charity. To these, it is fitting to add the intercession of the saints of Heaven: whose efficacy, especially in this matter, is so great, as Augustine teaches, speaking acutely of Stephen: "If the holy Stephen had not prayed, the Church would not have Paul today" (3). Therefore, we earnestly implore Gregory, whom his people were accustomed to call the Apostle of England; Augustine, his disciple, and his legate, and others, whose admirable virtue and admirable deeds have glorified this blessed Isle of Saints; and also the special patrons, Peter, the Prince of the Apostles, and George; and above all, the most holy Mother of God, whom Christ Himself left to the human race from the cross, and to whom your kingdom, by a most noble proclamation, has been dedicated as *Dos Mariae*, from the very beginning. We invoke all of them with great prayers before God, that, under the auspices of the best times renewed, He may fill you with all joy and peace in believing, that you may abound in hope and in the power of the Holy Spirit (4). The particular and true offices of prayer, which among Catholics are instituted for the present times and conditions, in order that they may be celebrated with greater frequency and devotion, must be diligently observed. First of all, may the holy custom of the Rosary of Mary flourish, which We ourselves have so greatly encouraged: for it is, as it were, the *summa* of the evangelical virtues.

(1) 1 Corinthians 10:27

(2) John 15:7

(3) Serra, in vita s. Stephani, VI, n. 8.

(4) Romans 15:13

[*Latin ed. p. 593*]

APOSTOLIC LETTER. 593. The benefits contained herein are most fitting, and from them, salutary advantages for the people will flow perpetually. Furthermore, in addition to the benefits of the sacred indulgence, which Our predecessors have granted in the same manner, We wish, of Our own accord and with Our authority, to add something. That is to say, to those who have recited the prayer which We append to this letter, We grant an indulgence of three hundred days, complete, to all, even to those not in England, provided they recite it daily, observing the customary conditions, once in the month. May all these things increase and be fulfilled by the divine supplication of Christ concerning unity: which, on this day, through the most holy mystery of His Resurrection, We reiterate with immense confidence: "Father, sanctify them in thy name; that they may be one, as we are one. And I give them the words which thou hast given me; and they were filled with joy in my name. I pray not only for them, but also for them who shall believe in me through their words; that they may all be one; as thou, Father, art in me, and I in thee, that they also may be one in us: that the world may know that thou hast sent me, and hast loved them, even as thou hast loved me." (1) Indeed, for the entire people of Britain, We desire and

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hope for all that is good from God: above all, We pray with all our heart that those who seek the Kingdom of Christ and salvation in the unity of faith may attain the fullness of their hopes. Given at Rome, at Saint Peter's, on the fourteenth day of April, in the year 1885, in the eighteenth year of Our Pontificate. LEO XIII, POPE.

TO THE MOST HOLY VIRGIN FOR OUR ENGLISH BRETHREN: PRAYER. O blessed Virgin Mary, Mother of God, our Queen and most loving Mother, turn your benign eyes to England, which is called your own, turn to us, who place great trust in you. Through you was given Christ, the Savior of the world, in whom our hope consists; and through Him, you were given to us, through whom that same hope is increased. Therefore, pray for us, whom you received as your children at the foot of the Cross of the Lord, O sorrowful Mother: intercede for our brethren who are divided, that they may be joined with us in the one true fold, with the Good Shepherd, your Son, the Vicar on earth. Pray for all of us, O most pious Mother, that through faith, and through fruitful good works, we may merit to contemplate God with you in the heavenly homeland and to praise Him for all eternity. Amen. (1) John 17:11, 17, 20, 21, 23. Acts, Vol. XXVII, page OOOXXII, 38.

[*Latin ed. p. 594*]

594 FROM THE HOLY CONGREGATION OF THE COUNCIL IN NANCY-TOUL. REGARDING TRANSLATION AND SUSPENSION. Dated September 1, 1894. Session 24. Chapter 5, Concerning Reforms. SUMMARY OF FACTS. The parish commonly known as Noviant-aux-Prés, in the Diocese of Nancy-Toul, was obtained in the year 1888 by the priest Francis Hémonet, the protagonist of the present controversy. For, by a decree dated February 24, 1893, he was removed from this parish by the Bishop and transferred to another parish, commonly known as Raon-les-Leau, and he appealed to the Holy Congregation of the Council against the Episcopal decree, which was notified by the general vicar. Since the pastor responded to the Bishop with several letters, alleging various reasons by which he refused to comply with the imposed transfer, he was, by a decree dated March 4, 1894, suspended from the administration of the sacraments with regard to the church of Noviant-aux-Prés. After the pastor interposed an appeal to the Holy Congregation of the Council, the following was written to the Bishop on June 23, 1893: "Regarding the matters presented to the esteemed members of the Holy Congregation of the Council on June 16th of the current year, concerning the appeal of Francis Hémonet, the esteemed Fathers have decided to write as follows: At the request of the aforementioned priest, Hémonet – having been heard – and the Orator humbly submits to his Bishop and obeys his commands, and in the future, he shall not dare to appeal to the Holy See regarding similar matters, and this is to be notified, as we now execute, to the same esteemed

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members, to whom we wish all good things." The Bishop notified the Holy Congregation of the Council's decree to the pastor by letter dated July 25, 1893, setting a term of eight days for the pastor to comply with the order. After this term passed without effect, the Ordinary suspended the aforementioned priest from the administration of the sacraments, or from the celebration of the Mass, and from any ecclesiastical act.

[*Latin ed. p. 595*]

NANCY. 595 Quia sacerdos Hémonet iterum ad Sacram Congregationem (S. C. C.) recursum habuit contra hoc decretum, sub die 12 Augusti, ita Ordinario rescriptum fuit: « Cum ad Reverendissimum (A. T.) mitto novum supplicem libellum sac. Hémonet, ut super eo mentem aperias, simul notum tibi facio, praecipuum esse, ut praecipitum huic sacerdoti factum rescripto diei 23 Iunii p. p., se scilicet subiiciendi Episcopo eiusque parendi mandatis, praecise respicere dimissionem paroeciae et discessum eiusdem e loco Noviant-aux-Prés, de quo quaestio tunc agebatur; susceptionem vero novae huius vel alterius paroeciae, rem esse a praecedenti distinctam, ad quam S. C. taxative non respexit in suo rescripto. Quapropter hac de re A. T. procedere quidem poterit ordinaria tua potestate, minime vero S. Sedis nomine et auctoritate ». Interim sacerdos Hémonet Romam se contulit, a divinis suspensus ex praecepto sui ordinarii; ubi agitabatur causa sub duplici dubio; primo nimirum, an causa adfuerit sufficiens obligandi parochum, ab una Ecclesia removendum, ad aliam suscipiendam, et secundo an consequenter sustineatur sententia suspensionis. Nam S. C. C. in litera diei 12 Augusti supra relata aperte explicat quaestionis terminos. Nihilominus, quia rationes translationis innituntur remotionis rationibus, hae et illae perpenduntur. Disceptatio Synoptica DEFENSIO EPISCOPI. Episcopus in primis refert nonnulla facta, quibus comprobet sacerdotis Hémonet ingenium esse pronum in rebellionem. Narrat enim occasione sepulturae cuiusdam Marchai, ob nonnullas difficultates, exinde enatas, se exquisivisse ab Hémonet, qua loci parocho, relationem factorum, ut de iisdem posset inquirenti politicae auctoritati respondere; sed hoc obtinere non potuisse a rebelli sacerdote, quamvis pluries et instantius interrogato. At Episcopus praecipue parocho Hémonet exprobat factum, cuius ipse fuit auctor, ut parochiae Fabriceria denegaret quemdam succursum.

[*Latin ed. p. 596*]

596 NANCY. It is customary, in all parishes, to provide for elderly, infirm, or poor priests, according to the custom confirmed by civil law. In response to the complaints of the Ordinary regarding such an unjust denial, the treasurer of the Fabriceria [church fund] replied with letters that were exceedingly insolent, which the Bishop is certain were intended to be delivered to the parish priest Hémonet. Therefore, the episcopal court

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summoned the Fabriceria to appear before the judge of the peace; but, certain that it would be condemned, it paid the debt due for only the current year, not for previous years, due to the statute of limitations as prescribed by civil law. Then, the priest Hémonet was summoned by the Diocesan Curia to answer regarding the resistance he had shown, but he was unable to present anything except one letter from the Vicar General, who had granted the Fabriceria a dispensation from the aforementioned payment for only one year in the past. Finally, the Bishop notes that this example of rebellion was quickly imitated, and imitators were found who stirred up factional disputes in the parish, so that he quickly decided to curb Hémonet's audacity by a decree of removal from the parish of Noviant-aux-Prés, and transfer to another parish, commonly called Raon-les-Leau. He insists that he recognized the necessity of this reprimand all the more, the more insolently this priest had behaved towards his superiors, especially towards the Vicar General, in relation to a certain marriage to be celebrated in the parish of Menil-la-Tour; in this matter, which was entirely irrelevant to him, the priest Hémonet wanted to interfere, and he was not ashamed to publicly accuse the Vicar General of a false crime. The Bishop diligently observes that he nevertheless always persevered with admonitions and paternal corrections, and he punished the priest as much as he could, but he did not succeed in making him repent of his crime. For the priest would retort against the superiors' reprimands with public complaints, which were circulated or to be circulated in newspapers, as he demonstrated by publishing a book entitled "Nancy-Juif," in which, under the pretext of exposing the deceptions of the Jews, he pursued all the ecclesiastical prelates with accusations and insults, as if they were Cardinal Foulon. The Bishop concludes these allegations as follows: "L'étendue de ce mé-"

[*Latin ed. p. 597*]

Furthermore, he demonstrates once again my deference and respect towards the Roman Congregations. "It also demonstrates that, with regard to Monsieur Hémonet, as I always do with all priests, I have employed all means of gentleness, and that I extend patience and indulgence to the utmost limits." He explains the reasons for which he acted in this way as follows: "If I insisted that Mr. Hémonet accept another cure, it is 1. because there was there a means of making him leave Noviant-aux-Prés; 2. a means of drawing him out of the idleness which can only be detrimental to him; 3. to give him the possibility of rehabilitating himself. Certainly, I would not have left him long in the parish of Raon-les-Leau if he had gone there with docility, and I would have given him a better parish as soon as he had demonstrated his good will. I recognize that a priest who obstinately rebels and who strives to do evil in a parish to which he has been assigned cannot be a good curate." "It is certain, evident, and this is of the highest importance that the reasons for which Hémonet was subjected

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to suspension are: a) his open, scandalous resistance to the decisions of the Holy Congregation regarding his revocation as curate of Noviant, and regarding his departure from Noviant; b) his resistance to the order of his Bishop to go to the parish of Raon-les-Leau; c) his efforts to stir up the inhabitants of Noviant and neighboring curés, and to incite them to revolt; d) the insults uttered against the Holy Congregation, and his Bishop, and the Pope himself. Finally, the response already given by the Bishop to the reasons presented by Hémonet must not be overlooked. For, when he opposed the transfer with the primary cause of his poor health, the Bishop diligently replied that he would immediately abandon his intention if doctors testified that the health of this priest would suffer as a result. As for the other difficulty, namely the prejudice to his good name and reputation, he observes that this argument too strongly proves..."

[*Latin ed. p. 598*]

598 NANCEYEN. Indeed, it would suffice to prevent all punishment. Elsewhere, he protests that he will, as soon as possible, give the parish to the priest Hémonet, whenever he demonstrates his true intentions and makes amends for the scandal through punishment. DEFENSE OF THE PRIEST. However, the patron of the priest Hémonet, after noting that the thesis regarding the removability of parish priests, commonly called vicars, is not peaceful in Gallia, observes that, even if this article is granted, but not conceded, the parish priest, however removable, can never be removed, except for a very urgent reason. Therefore, he says, even if those who serve are considered mercenaries, since they possess the Church in their own name, they cannot be removed except by the established legal process, because even mercenaries can be removed if a reasonable and serious reason is proven: as is stated in the decree *Reinteg.* S. C. C. of November 27, 1852, which states (there) "It is admitted that the case concerns a benefice - removable - but this power to remove does not extend so far, that it can be exercised without a serious reason, especially in the case of parish priests, who require a permanent office by their very nature." And it was confirmed in *Massanen. Reinteg.* of March 18, 1854. The Doctors confirm this most just judgment with an argument, as they say, from the lesser to the greater, citing the example of civil offices, from which, according to commonly accepted practice, officials are not removed, unless a legitimate reason is demonstrated. Regarding the legitimate reasons, it is noted that they are present when there is a need to consider the eternal salvation of the parishioners - Fagnanus in chapter 10 on unjust, reasonable, and legitimate reasons for removal, says that, it is said to be an unjust, reasonable, and legitimate reason for removal, when the pastor can no longer "exercise the parochial duties and lead those entrusted to him to salvation." Indeed, if parishes are established in order to consider the spiritual needs of the faithful, and if, for this reason and no other, any pastor is appointed to be

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responsible for the eternal salvation of the parishioners, it follows that, as long as he is able to fulfill this duty, there is no sufficient reason for him to be removed.

[*Latin ed. p. 599*]

NANCY-TOUL. 599. Having considered these circumstances, it appears that the removal [of the priest] directly contradicts the purpose for which parishes are established. Therefore, the sacred canons seem to restrict the causes for removal to the fault of the priest being removed, and this fault must be of such a nature that the priest, being removed, can no longer effectively exercise pastoral care there. However, in the case of the priest being removed, not only is there no fault on his part, but also all those conditions are lacking which would justify a voluntary relinquishment of the benefice, as enumerated in two well-known verses: "The weak, the ignorant, the ill-intentioned, the irregular, whom the good people hate, may be removed." It clearly follows that, due to the absence of a legitimate cause, the removal of the priest Hémonet from the parish of Noviant is unjust and detrimental to the spiritual well-being of the faithful entrusted to him. Indeed, nothing is alleged against the transferred priest concerning matters relating to the care of souls. The Bishop of Nancy-Toul objects that the priest was less obedient to episcopal authority; that he uttered insulting words against the vicargeneral; that, in defending the fabric of the church of Noviant, he caused a financial loss to the diocesan administration. But nothing is alleged that directly affects the care of souls. Nothing is said about weakness or ignorance, since it is known that the priest possesses sufficient knowledge; nothing is said about bad morals, nothing about hatred from the people. On the contrary, evidence is presented that the priest, due to his amiable nature and his manner of acting, has gained the affection of the people of Noviant and of neighboring priests. And all of this is made clear by the Bishop himself, who, when writing to the Sacred Congregation of the Council, stated that the priest Hémonet had not at all been transferred from the place of Noviant, if he had made a declaration of submission. Therefore, the advocate argues, if the priest had made a declaration of submission, the transfer would not have taken place, which implies that everything alleged against him by the Bishop is impious and should not be tolerated.

[*Latin ed. p. 600*]

600 NANCY-TOUL. The Bishop, concerned for the care of souls, should not exceed the bounds of his authority, for even if such actions were true, they should be overlooked, since other legal remedies are available to the Bishop to persuade the priest to a more reasonable course of action. Subsequently, the advocate, wishing to demonstrate that the reasons presented by the Bishop were insufficient, recounts how the

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priest Hémonet was accused of showing less reverence for the episcopal authority by accepting the subsidiary curacy of Minorville in a hasty manner, by uttering disrespectful words against the Vicar General, and by urging the parishioners of Noviant not to pay their contributions to the diocesan administration. Indeed, the advocate notes that the Bishop accused the priest of irreverence because, when the neighboring parish of Minorville was vacant, the priest refused to immediately accept the subsidiary curacy of that parish, despite being invited to do so by his superior. However, the advocate points out that any observations made by the priest Hémonet regarding the subsidiary curacy of Minorville stemmed from the fact that the subsidiary duties were prolonged for months, to the detriment of his health, while he diligently managed both parishes for a period of five months, as evidenced by a letter, recorded in the proceedings, from the Vicar General of the Nancy-Toul diocese. Furthermore, the advocate asserts that what is alleged regarding the words spoken by the priest to the Vicar General is untrue; for in the cited documents, only the sincere desire of the priest to defend himself against unjust accusations is found. It is true, the advocate continues, that the priest was reproached concerning the administration of the fabric of Noviant, but this should be considered to his credit rather than to his discredit. It is said that he advised against paying 20 to the diocesan administration. However, this does not pertain to the care of souls, but to the material interests of the Church, over which the Bishop presides, just as the priest presides over the fabric of Noviant. The Bishop claimed that he had never granted a dispensation or remission regarding the payment, and that if he had ever done so, it would not have exceeded a period of one year; the priest, however,

[*Latin ed. p. 601*]

NAINGEYEN. 601. But he who spoke with full knowledge of the matter said that the dispensation granted to the parish of Noviant had been in effect for four years, and the general vicar presented a document demonstrating that the assertion of the Bishop was less accurate. Therefore, the parish priest spoke the truth, and he was obligated to do so when the interests of his own Church were at stake, of which he was the spouse and administrator. Since, therefore, no just cause for removal was found, it necessarily follows that the transfer was made out of hatred, and that damage and infamy result from it. The transfer came unexpectedly, after the parish priest, Hémonet, had sent a letter to the Bishop from Menil la Tour, containing justifications regarding certain allegations made by the general vicar, Didiejeran, and at the time of publication in Nancy-Juif. And when hatred is added, and when infamy or damage results, the removal or transfer cannot be sustained, as the Doctors teach with one voice. The most illustrious De Angelis, addressing the matter more fully, cites numerous

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decisions, Lib. 1, title 28, n. 7: "Regarding parish priests, whether it is the Chapter, or whether it is the Bishop, relating to secular clergy who are vicars and are removable at will, I believe that these should be retained according to the responses of the Sacred Congregations, and other circumstances. 1. If the revocation of the vicar took place out of hatred and malice, then this is a case for the reintegration, or rather, the maintenance, of these vicars in the office from which they were removed... 2. If, likewise, the revocation caused disgrace or infamy, or likewise caused great prejudice to the vicar, then the revocation made without cause should be declared invalid, and the vicar should be held firmly in his office..." Girardi, in his additions to the treatise *De officio et potestate Parochi*, chapter 115, speaking of temporary vicars, says: "Although removable vicars can be removed as often as necessary, it must be noted that, in fact, they should not be removed without a legitimate cause, S. Congr. Conc. July 11, 1820, S. Congr. E E. and Reg. in Sulmona, May 24, 1645, and May 16, 1563, and elsewhere." And a little later, he adds: "All removable curates can be removed at the discretion of the diocesan bishop."

[*Latin ed. p. 602*]

602. Concerning removals [from office]. But these should not be removed except for a reasonable and just cause. For in this matter, too, reason and justice must be observed, and consideration must be given to the honor of those being removed. And this is the equitable principle of which the Cardinal of Lucca spoke in *Disputationes de Beneficiis*, 97, and from which it seems to follow that recourse or complaint to a superior is permissible, at least for a summary examination of the cause for which such a removal is made, especially when it does not usually occur without some hatred or prejudice resulting in damage to reputation or otherwise. Indeed, the Holy Congregation, when a just reason for the removal is not explained, is accustomed to reinstate those who have been removed, as is known from the document from Messina, March 18, 1854, concerning the doubtful proposition: "Whether the deprivation of a parochial benefice is permissible, or whether there is a place for reinstatement in such a case." The Holy Congregation responded: "Negatively to the first part, affirmatively to the second." Similarly, it responded in *Nullius*, Farf., July 6, 1791, and in *Romana Susp.*, March 28, 1801. With these decisions, the Holy Congregation departed from the excessive rigor of the Roman Rota in the case of Hispalensis; and rightly so, since the judgment of a good man must be guided by reason. The patron is said to have been incensed by the events that followed the removal and translation, namely, by the words of the Bishop, in which the priest Hémonet was called "execrable," by the manner in which the suspension was carried out, by publicly announcing it in the church as if he were to be avoided, and by forbidding neighboring pastors from administering the Sacraments to the suspended

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priest, or from having any dealings with him; and also by the erasure of his name from the Diocesan Journal. Moreover, the advocate alleges that the reason for the translation was almost entirely based on the publication of "Nancy-Juif." This publication incited hatred of the priest Hémonet by the Jews. This is a matter of public notoriety, and the newspapers *Le Républicain*, *Les Archives Israélites*, *L'Echo Toidois*, and *L'Impartial* greatly attacked the priest Hémonet. It cannot be denied that in this case, the intervention of the civil authorities occurred due to the audacity of the Jews; therefore, a scandal was created, which affected the...

[*Latin ed. p. 603*]

NANCY-TOUL. 603 How much does the Church of Christ owe to the arbitrary will of perfidious Jews! However, the Orator continues, if there is no established legitimate reason for the removal, the suspension from divine office, under which the Priest Hémonet is still suffering, cannot be maintained. For, on the part of the Bishop, there is no right to command; on the part of the Priest Hémonet, there is no obligation to obey, or there is no contempt of the keys, no contumacy, without which the suspension cannot, in any way, be maintained, as the Sacred Council of Trent, Session 25, De Reformatione, Chapter 3, and as Covar, in chapter *Alma Mater*, § 9, no. 3 and following, paragraph 4, title Suarez 4, De Censura, disputation 15, section 3, *Spero! Decis.* 39, no. 30, and the Rota, Decision 167, no. 6, page 19, volume I, have unanimously declared. For, in this case, there is not even contempt of the keys, but rather the contrary is most clearly demonstrated; therefore, the Priest Hémonet has considered, both in the disposition of the law and in the most steadfast opinion of the Doctors, that he cannot be removed from the parish of Noviant without a judicially proven crime, or at least without a just and reasonable cause. In this case, it cannot be said that he has contemned the authority of the Most Reverend Ordinary of Nancy-Toul, or of the Holy See, or that he has resisted power, especially since he hoped, and his hope was not disappointed, that the controversy would be discussed before your Most August Senate. To this end, he interposed a protest with the Bishop himself, through a letter, whereby his alleged contumacy or contempt is rendered even less worthy of consideration, since the care for his health and the love of a good reputation prevented the Priest from going to Raon-les-Leau. It must be noted, the Orator continues, that this is not a suspension based on informed conscience due to a hidden crime; rather, it is a suspension for which the reasons, specifically, without any restriction assigned by the judge, justify the sentence; which, if they do not exist, or are different from what is presupposed in the sentence, the sentence collapses as if it were issued on a false basis, or on a false presupposition. And this is a suspension imposed as a censure, equivalent

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to deposition or deprivation, which, in order to be valid, must...

[*Latin ed. p. 604*]

604. NANCY. Lest hope should arise that the delinquent had intended to be corrected, or to repair the damages or scandals caused in any way, he concludes that the suspension cannot be maintained, either by external or internal arguments. For it is most evident that the provisions which take the place of punishment require at least a summary judgment, by which the justice of the provision can be verified. This arises from divine law, whether positive or natural, and from human law, whether ecclesiastical or civil, and also from the unanimous opinion of the Doctors; for it is a fundamental principle of law that no one should be condemned unless there is a legitimately proven cause. The present discipline of the Church, considering the circumstances of the times, with the authority of the Supreme Pontiff, through the Sacred Congregation of E E. and R R., dated June 18, 1880, has issued instructions for ecclesiastical courts regarding the manner of proceeding economically in disciplinary and criminal cases of clerics, in which, with preventative, repressive, and remedial measures assigned, it is expressly warned that they must be applied "according to the prescriptions of the canons... regarding the penal measures that the Reverend Ordinary may apply, this instruction does not derogate from the solemnities of judgments, prescribed by the sacred canons, by the apostolic constitutions, and other ecclesiastical provisions, § IX" (1). And it follows: "When it is necessary to proceed criminally, either for a violation of a precept, or for a common crime, or for a violation of the laws of the Church, the process can be completed in summary forms and without the pomp of a trial, always preserving the essential elements of justice." Furthermore, it is noted that in order for a censure to have effect, the obstinacy of the one who is to be censured must be demonstrated, either by three warnings or by one peremptory warning, "preceded by at least two warnings, and also by an edict," as prescribed by the Fathers of Trent, Session 25, chapter 3, De ref. Because the cause of the censure is necessary for the one who is struck by this sword, this perpetual deprivation is, nevertheless, very grave (1).

(1) This instruction was reported in Vol. XIII, page 524.

[*Latin ed. p. 605*]

NANCY-TOUL. 605 responds, according to Deuteronomy: "And if they see that the offender be worthy of stripes." For the principles of reason and equity suggest that the punishment should be proportionate to the fault, and imposed according to the manner of the fault, without exception, and including suspension and interdiction: Benedict XIV, *De Synodo Dioecesana*, Book X, chapter 1, paragraphs 2 and 3. The gravity of the fault is to be determined from the precept given to the priest of Raon-les-Leau, as well as from the circumstances accompanying the precept. However, it must

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be remembered, says the Advocate, that Bishops are pastors, not lords, of the clergy, so that they can dispose of them, after considering their will and their health, especially when there is no immediate danger to souls. The matter at hand concerned providing the Church with a new rector, whose office did not immediately arise, either in terms of place or of person. No extraordinary circumstance is alleged or known to demonstrate this danger. The Bishop could have provided for the salvation of souls in Raon-les-Leau through another priest, as he has done in other cases. The Bishop of Nancy-Toul's precept did not concern an immediate office that must be fulfilled by a specific person, so that otherwise, serious harm would result to the salvation of souls. In this case, very serious and reasonable circumstances existed from which it becomes more clearly apparent that the priest could not effectively exercise pastoral care, nor could he sincerely take charge of the new flock. His weak health, as evidenced by authentic documents; his personal unpopularity, already arising from the publication of *Nancy-Juif*; the rumor reported by ephemeral newspapers that Raon-les-Leau was a place infested with criminals; the public opinion that considers Raon-les-Leau as a place of banishment; the priest's appeal to the Supreme Tribunal of the Holy See, in order to obtain justice regarding the precept, all abundantly demonstrate the correctness of the priest's actions in this case. Finally, the Advocate argues that the precept was not properly issued, namely, due to a less than correct interpretation.

[*Latin ed. p. 606*]

606 NANGEYEN. Regarding the rescript of the Holy Office, the Bishop of Nanceyensis declared these words: "We grant him eight days... to execute our orders and the orders of the Holy Congregation, that is to say, to leave Noviant-aux-Prés and go to the parish of Raon-les-Leau, which we have assigned to him. And, if he does not execute these orders within the aforementioned time limit, he will be struck with an ecclesiastical censure." However, the Holy Congregation never intended to order the priest Hémonet to go to Raon-les-Leau, as from the authentic interpretation of the rescript of August 23, 1893, the precept, as if flowing like a stream into a bed, does not subsist with force, and therefore the subsequent censure is not justified. Having stated these things, the following points were proposed for resolution:

I. Whether there exists a legitimate cause for the transfer in this case.

II. To the extent that the answer to the first question is negative, whether the subsequent suspension in this case is justified.

RESOLUTION. The Sacred Congregation, after deliberation on September 1, 1894, decided to respond: To I and II, affirmatively, and furthermore (1).

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RAPOLLA. REGARDING MARRIAGES.

On December 15, 1894.

SUMMARY OF THE FACTS.

Aloysius, of the diocese of Rapollensis, who was receiving a stipend in Florentiae in the year 1891, was captivated by the love of a certain Annita of that city. She asserts that it came to pass that not only was there a promise and a reciprocal promise of future marriages, but also that, enticed by the hope of a future marriage (1).

(1) Recole, Vol. XI, 382; XIV, 172, 178, and 181; in which place we have added an appendix regarding the parish churches in Gallia after the Concordat of the year 1801; XIX, 53.

[*Latin ed. p. 607*]

RAPOLLA. At the age of 607, [Aloysius] is said to have caused the loss of a maiden's virtue. And [Aloysius] protests that no betrothal was begun, nor did he deflower [Annita], although she was strongly enticed by [Annita] through every means to enter into such a marriage. Having completed his military service, [Aloysius] returned to his homeland and formed other affections with a certain young woman, seriously considering entering into marriage. When [Annita] learned of this, she, in a rage, secretly set out on a journey to [Aloysius]'s home; upon arriving, she went to [Aloysius]'s father's house at night and, finding the door closed, filled the neighborhood with cries and lamentations, insisting that she be admitted to the family; but she was refused. Then she began to spread rumors among the people, claiming that she had come to compel [Aloysius] to fulfill the promised marriage, which he could no longer deny, after having been carnal with her, almost against his will. Thus, the family of [Aloysius], disturbed by these rumors, decided to receive [Annita] into the family, in order to remove the further scandal. She remained there for eight days, during which time it seemed that marriage negotiations were not only resumed, but were brought very close to a conclusion. However, when [Annita] returned to Florence, she again prevented [Aloysius] from proceeding with the marriage, which he was eager to enter into with another young woman; in fact, they had already entered into a marriage, which is called civil; and they would have contracted a legitimate marriage before the Church as well, had [Annita] not insisted before the Rapolla Curia that "nothing should proceed," citing the betrothal with [Aloysius] and the consummation of the marriage. [Aloysius], on the other hand, asserts that he repeatedly rejected [Annita], because he discovered her bad character. The Rapolla Curia, considering [Annita]'s insistence, although both the accuser and the accused were contumacious, initiated a process concerning the impediment arising from the betrothal, as well as regarding the crime of defloration or adultery.

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Regarding this matter, two doubts were proposed to be resolved, namely: I. Does it appear in this case that a private betrothal was begun? II. And, assuming that is the case, whether the reluctant betrothed is subject to ecclesiastical censure.

[*Latin ed. p. 608*]

608 RAPOLLA. Can a man, who is considered suitable for marriage with a woman, and who, indeed, has been promised a dowry, withdraw from a marriage contract that has been entered into, or rather, from betrothal? This doubt was resolved by the episcopal court through the following judgment: Regarding I. The records of the proceedings do not leave any doubt about the existence and validity of the private betrothal between Aloysius and Annita; from which it is clearly apparent that there was a promise and a reciprocal promise of future marriage. Regarding II. Consequently, the injunction, or prohibition, against Aloysius, issued by Annita, to prevent him from being declared free in the eyes of the Church, is confirmed. However, the priests of the place where Aloysius resides are instructed, without resorting to coercion, to persuade him to enter into a religious marriage with Annita as soon as possible, or, if that is not possible, to establish a dowry that is in accordance with the law. Against this judgment, Aloysius appealed; but after the appeal was submitted to the court, the appellant himself submitted supplication letters to the Sacred Congregation, requesting a dispensation from the impediment to marriage, so that he might lawfully and legitimately, in the meantime, be able to marry a wife before the Church, while the matter of Annita's claim for compensation for the alleged loss of virginity remains to be decided by the ordinary judge. While it was necessary to determine whether the judgment of the Rapolla court should be confirmed or not, the testimonies of two witnesses, the letters of Aloysius and Annita, and other documents were examined. From these, it appeared that there was a true promise and reciprocal promise of future marriage. Aloysius presented no documents. He only, in addition to the appeal to the Sacred Congregation, appended some observations; with which he first attacks the judgment, claiming that it lacks the proper *forma*, because the reasons for the judgment are not explained. He does not present any evidence of the facts that would indicate the existence of the betrothal or the alleged offense of loss of virginity. Then, he argues that the judgment lacks not only the proper *forma*, but also substance, because it asserts, but does not prove anything. For the testimonies presented are based on hearsay, and they report what they heard from Annita herself; and while the letters may express the sincere love of a young man, they do not necessarily express a certain and deliberate intention.

[*Latin ed. p. 609*]

RAPPOLEN. 609. Concerning the commencement of marriage. Further-

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more, it is commonly the case that young men give letters set with diamonds to young women, containing promises, by which, however, a marriage is certainly not contracted. As for the matter of defloration, it is noted that if this were true, such a furious young woman, not disdainful of baser methods of contention, would certainly not have left any stone unturned to prove that she had been defiled. On the contrary, she remained silent on this point after the proceedings were to be instituted. Finally, the appellant points out that the judge, convinced of the truth of the facts, does not condemn the defendant, but rather obliges him, at least morally and in the eyes of the Church, to either take the woman in marriage or to provide her with a dowry; but he warns the executors of the sentence, or the parish priests, to persuade the defendant, if possible, to fulfill the obligation, either by entering into marriage or by providing a dowry.

Synopsis of the Dispute. It does not seem that the lack of proper form prevents the confirmation of the judgment; for although it is true that judges are inferior to the Roman Pontiff and must render their judgments with reasons, nevertheless, in this case, the judgment of the Court is not so devoid of reasons that it should be considered invalid. However, as the appellant adds, at least the very substance is lacking, since the reasons presented and the alleged facts do not lead to a conclusion. This does not seem to be admissible; because the letters, the testimonies of witnesses, and the conduct of the plaintiff may be sufficient to provide the judge with the necessary moral certainty to pronounce a judgment on this matter. Finally, the appellant's last argument, namely that the plaintiff would not have been contumacious if what she asserted in court were true, is refuted; for the appellant himself was contumacious, since it was in his greatest interest to defend himself to protect his good name and to bring the intended marriage to fruition.

SENTENCE OF THE COURT. Acts, Volume XXVII, page CCCXXII. TO BE CONFIRMED. IT SEEMS. 39.

[*Latin ed. p. 610*]

610. RAPOLLEN. If, however, the series of events is considered, it appears that Aloysius greatly harmed the case by admitting Annita into the family, with the intention of once again initiating marriage negotiations, when she herself was constantly harassing Aloysius and his family, and did not hesitate to assert that her betrothal had been violated, and that her virginity had been taken by violence and fraud. Thus, by his actions, Aloysius seems to have confirmed Annita's accusations, and to have validated them. The judgment of the court appears to be flawed. But, on the other hand, it should be noted that a betrothal is the agreement between those about to marry; that is, the promise and reciprocal promise of future marriage. Such agreements are not presumed, but must be expressly proven. For the bond of liberty is important, which is always presumed to be intact unless the contrary is clearly proven. However, the evidence presented in

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this process can rightly be questioned as to whether it is sufficient for such clear proof. For, with regard to love letters and other similar signs that often occur between young people who are attracted to each other, these must be considered with caution, as noted by Monsignor Gasparri in *Tractatus de Matrimonio*, V, I, no. 22, citing Marc, ibid., « Quae cum ita sint, merito observat » Mare n. 1951 in nota: « Frequently, the promises of future marriage, which are often made between young people who are attracted to each other, are not true betrothals, because they involve more conditions than a contract, especially in those regions where it is customary for betrothals to begin with some solemnity ». Furthermore, see D'Annibale, *Liber III, tract. IV De mart.*, n. 505 in nota 1, which states: « V. Finally, how often it appears that the will of the contracting parties is not sufficiently clear, if in other cases we must be more eager to dissolve than to bind (I. 96 De A. et O.); here especially, because forced marriages often have difficult outcomes, chapter 17, 4, t. § Alph., VI 840; so that, with even the slightest doubt, the judge must pronounce in favor of excluding betrothal. »

[*Latin ed. p. 611*]

RAPPOLLO. 611 Rot. Rom. 8 Feb. 1705 cor. Bonillo; "quamquam haec S. Rotae verba accipienda sint cum grano salis." Quoad crimen vero deflorationis seu stupri, haec animadvertenda videntur. Primum, factum deflorationis non apparet sufficienter comprobatum donec asseritur tantum ab ipsa muliere in aestu irae et zelotypiae, et crimina non praesumuntur, sed manifeste probari debent. Eo magis quod haec mulier videretur debere esse aliena a propria macula revelanda, adeo ut facilitas detegendi suam ignominiam, suspicionem ingerere possit de mala fide accusatoris, iuxta vulgare effatum: "accusatio non petita, accusatio repetita." Insuper, quia vir cogitur ad deflorationis damna resarcienda, non iste posset ita alloqui mulierem: "nonne tu ipsa tibi damnum intulisti, quando tuam infamiam in vulgum disseminasti?" Et restitutio sane urgenda est pro quantitate damni certe illati. Denique, ex processu non clare patet an agatur de defloratione in quam, absque fraude aut dolo defloratoris, consenserit mulier, an potius verum intercesserit stuprum, quo violenter virgo florem virginalem amiserit; uti etiam ex dictis non videtur sufficienter comprobatum an promissio matrimonii, saltem ex parte defloratoris intercesserit. Quae omnes circumstantiae quamnam vim exerceant in huiusmodi iudicia, docte pro more suo, inter alios Canonistas, disserit Reiffenstuel, com. in Lib. VI Decret. Greg. IX tit. I. Quocirca, hisce omnibus hinc inde adductis, suppositum fuit diluendum Dubium, an sententia Curiae sit confirmanda vel infirmanda, casu. RESOLUTIO. Sacra C. Concilii, re discussa sub die 15 Decembris 1894, censuit respondere: "Praevia solutione summae ab Episcopo

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determinandae, favore Annitae, removeatur oppositum « nihil transeat».”

[*Latin ed. p. 612*]

RAPPOLEN. From which [points] one may gather: I. That the validity of betrothals is more likely to be proven by the mutual expression of will by the parties, than by the formulas of words. II. Hence, to prove private betrothals, it suffices to demonstrate the mutual consent, gathered either from words, or from accompanying actions, or even from conjectures, taking into consideration the circumstances in such matters. III. The existence of betrothals must follow the coercion prescribed by the means designated by the sacred canons; but since forced marriages often have bad outcomes, therefore, a benign interpretation of the law has granted the coerced party the power either to marry, or to make a monetary payment. IV. In the matter presented, the remedy of the dowry seems to have been applied, and it appears to be maintained, even in view of the existence of a civil marriage.

SUESSANA PARISH OF THE VICARIATE. On September 1, 1894. Section 24, chapter 5, concerning reforms. In the diocese of Suessana, a priest named Joseph had legitimately held the parish since the year 1891. He had received into his parochial home a certain Eleonora Gaetana, who appeared to be of suitable age and endowed with good morals; but this woman soon became a source of scandal for the parish priest, because his daughter, named Maria Gratia Migliozzi, who did not enjoy an equally good reputation, seemed to have strongly won the affection of the aforementioned woman. At least, serious suspicions were immediately spread among the people, which were made more probable by certain actions. Gratia, who had promised betrothal to a certain widower, is said to have, through the priest’s persuasions, been led to break her promise, so that she might adhere to a certain Joseph Passeretti, who, along with his mother and daughter, frequently visited the parochial home. But they only entered into a marriage, so-called civil, which nevertheless, given the circumstances, COMPENDIUM PACTI.

[*Latin ed. p. 613*]

SUESSANA 613. The parish priest offered himself as a guarantor for a small house, for a piece of land purchased, and for some household items. There was not a single word spoken about a religious marriage, although the bridegroom, being most devoted to the parish priest, frequently visited his house. Rumors of such conversations reached the ears of the Bishop; and in order to ascertain the truth personally, on an unexpected day, October 13, 1892, he arrived at the parish house, where he found two women. Severely rebuking the parish priest for such a scandal, he ordered that he immediately dismiss them and ensure that Gratia, with Joseph Passeretti, entered into a religious marriage. But the dissolution of this ill-begun rela-

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tionship provided an opportunity to more openly investigate the root of the scandals. For the man refused to continue living with Gratia, accusing her of having the worst of venereal diseases, so that the magistrate should have learned the cause of this separation: conversely, the wife refused to return certain household items to her husband, asserting that they were hers; and both turned to the parish priest to fulfill the promises they had made at the time of their marriage. The Bishop was able to confirm these circumstances through a process in the Curia, completed by an extrajudicial investigation, although during its pendency, a certain document signed by several parishioners attesting to the good reputation of the parish priest Joseph was presented to the Supreme Pontiff; however, the Bishop asserts that no credence should be given to it. Therefore, as a result of the process, the Bishop issued a decree by which he suspended the parish priest from his pastoral duties and the administration of the parish, ordering him to devote himself to spiritual exercises and to be absent from the parish for a month. The decree was first presented to the parish priest by the Primicerius of the Chapter on November 3, 1892, but in vain, because he expressly refused to obey; secondly, it was served to him by a messenger of the Curia, and then the parish priest tore the decree with his own hands. But later, appearing to repent, he approached the Curia, professing that he would accept the suspension, promised to complete his spiritual exercises, which he did, and paid Gratia Migliozzi the sum of 50 livres for a promissory note – commonly called a "cambiale" – held by the woman, or, as others say, furtively taken, at the time of their marriage. Nevertheless, he did not...

[*Latin ed. p. 614*]

614 Matters in SUESSANA took a turn for the worse, for other accusations were constantly brought against the parish priest by certain individuals, which the parish priest himself seemed determined to confirm, rather than refute. He was seen walking through the parish with a loaded firearm, threatening the accusers, and he requested permission from the civil authorities to carry other weapons, a request which he did not obtain. Therefore, on January 12, 1893, the Bishop reiterated the decree of suspension and the order to leave the parish, while also advising him to voluntarily resign from the parish. But not only did he refuse to resign, but shortly thereafter, he returned to the parish armed and dared to celebrate Mass there while under suspension. The Bishop did not fail to admonish him severely, urging him to cease this public scandal as soon as possible, and finally, on February 7, 1893, he ordered that a decree be served upon him through three canons of the Cathedral Church, with the order to resign from the Church. The parish priest protested his innocence, saying that he would endure everything, but that he would never resign from the parish. Because the scandals were disturbing public order and peace, the civil authorities inquired of the diocesan Curia about the matter to be done with

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the parish priest, which responded evasively, stating that an ecclesiastical process was pending and that, in the meantime, it had taken action against the parish priest according to canon law. Faced with increasing difficulties, the Bishop appealed to the Sacred Congregation of the Council, which responded on March 11, 1893, instructing him to further try to persuade the parish priest to resign from the parish, with the reservation of a pension, and to report on the active and passive state of the parish benefice. But with all attempts at a peaceful resolution failing, the Bishop received a response on April 21, 1893, instructing him to proceed with the process according to the Instructions of the Sacred Congregation of the Holy Office and the Holy Roman Church of 1886, regarding the removal of a parish priest. During the process, the parish priest showed considerable obstinacy, and among other things, he appointed a certain lay person as his advocate, a person who was not legitimately admitted by the Curia, who then wrote a libel against the Bishop. The sentence defining the outcome of the removal process was pronounced by Petrus Ceraldi, canon of the Cathedral Church of Suessana, who had been specially appointed as judge and delegate, and who stated:

[*Latin ed. p. 615*]

SUESSANA, 6th of [month]. REGARDING THE FACTS. "Having examined the documents presented by the Reverend Fiscal Advocate of this Curia of Caieta, concerning the life, morals, and manner of acting, or, the way of conducting himself, of the Reverend Father Joseph, parish priest of this diocese of Suessana; "Having considered the very documents concerning the life, morals, and manner of acting, or, the way of conducting himself, of the aforementioned Father Joseph, collected by the Fiscal Advocate, as appears in the records; "Having heard the sworn witnesses presented by the same Fiscal Advocate; "Having considered the protestation of Father Joseph, in which he accuses the officials of the Episcopal Curia of Suessana, both in his words in his defense, and in writing, as appears in the supplication sent on September 9, 1893, to His Eminence, the Prefect of the Sacred Congregation for the Holy Office, and returned to the aforementioned Bishop of Suessana; "Having heard and carefully considered the oral statement of the same Father Joseph; "Having heard all the witnesses presented and summoned by the same priest; "Having read and considered all the writings, depositions, declarations, documents, and petitions, as appears in the records; "Having heard and read the written conclusions presented and exhibited on February 5th of the following year by the Reverend Fiscal Advocate; on which day the case was proposed and discussed; "Having heard the written defense presented on the following day, February 6th, by the Defender of Office elected, the Reverend Biasio Rotondano, canon theologian of the cathedral church of Policastrensis; "Having read and considered the responses given by the Illustrious Fiscal Advocate against the defense presented by the aforementioned Defender of Office; "Furthermore,

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having considered that, from countless and irrefutable documents, it is clearly established that Father Joseph acted in a scandalous manner with a woman, as appears in the records; having considered all the circumstances, namely, the abuse of his own ministry, the secular dealings with the aforementioned woman, and the marriage—"

[*Latin ed. p. 616*]

616 In SUESSANA, a town within the ecclesiastical jurisdiction, a scandal has arisen, following civil proceedings already initiated, and resulting in the gravest of offenses; "Considering that the aforementioned Parish Priest has been defamed through these shameful relationships with his associates, not only among the inhabitants of his parish, but throughout the entire city and diocese; "Considering, therefore, the irreparable damage to that trust which is most fitting for a pastor, who ought to be concerned for the good and salvation of the flock entrusted to him, so that even his defenders openly confess that they will never receive the Sacrament of Penance from him, and that they will act otherwise, as evidenced by witnesses summoned by the Public Prosecutor; "Considering also that, if, even after receiving warnings, he should again engage in shameful conduct, as with the aforementioned woman, and a grave scandal should persist, especially given all the circumstances as considered in the records, and he should persevere in this behavior for reasons of his own conduct, even more so if it is considered that the woman, who has been shamefully known and deceived by him, and her betrothed, who are joined only by a civil bond and are separated in their presence and still harbor animosity, always remain in the same town, near the Church and the parochial house; hence, complaints, reproaches, quarrels, and scandals with her and her parents can again be repeated, especially in the current state of affairs; considering the appeal to the secular court against the woman herself and others; "Considering the almost unanimous sentiment with which the inhabitants of a large part of the same town pursue the aforementioned Parish Priest with hatred and aversion, especially after the appeal to the secular court made by the Parish Priest, so that it can safely be said that his presence in the parish will lead more to destruction than to edification, as is evident from all the witnesses presented, and especially from the testimonies, or declarations, of various priests who know the place, the inhabitants, and all the events; "Considering that the aversion of the people in a large part of the town grows daily because of the way the Parish Priest acts, as is evident from the records.

[*Latin ed. p. 617*]

SUESSANA 617: And it must be carefully considered and examined in this case, taking into account the character of the inhabitants and of the parish priest himself; "Considering the constant and persistent insubordi-

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nation, proven by countless acts, of the aforementioned parish priest towards his Bishop, who repeatedly failed to heed his exhortations, persuasions, warnings, and coercive measures, and who even violated the Decree of suspension; having considered all the circumstances as detailed in the records, and furthermore having considered that he repeatedly disregarded the Bishop's prohibitions by visiting the town of G and remaining there for a long time, conferring with people there to achieve a certain purpose, as will be explained below; "Considering the repeated acts of rebellion, by which the aforementioned parish priest, both verbally and in writing, denied the respect and obedience he had sworn to the Bishop, and even, through letters and anonymous writings, attacked the authority and dignity of the Bishop and of the Roman Curia, the most recent of which infamous publication, bearing the title 'Un atto di procedura canonica alia Curia di Sessa,' was printed by his own civil patron, and which, according to certain indications and confessions, must be attributed to the aforementioned parish priest, all of which are noted in the relevant records by the Most Reverend Fiscal Promoter; "Considering that, through his rebellious actions, the aforementioned parish priest dared to incite aversion and rebellion against the Bishop among his supporters, by visiting the town of G in defiance of the Superior's prohibition, and by using exhortations, promises, money, and other arguments, and by attempting to make them hostile towards the Bishop, as is evident from the demonstrations and threats made at the episcopal residence, and from the threatening letters, as recorded in the records; "Considering the numerous written appeals made to the civil authorities against the Bishop and his ordinances, and especially considering the appeal to the secular forum, while the canonical process was underway, with the intention of hindering the jurisdiction of the ecclesiastical forum, thereby preventing the witnesses and appellants from appearing before the ecclesiastical court, for which reason he remains censured with his civil lawyer, pending the issuance of an Apostolic Bull, chapter VI; "Considering and examining all that concerns the parish priest Joseph.

[*Latin ed. p. 618*]

618 At SUESSANA, after the first warning given on October 13, 1892, and subsequently, with paternal charity, by the Bishop, either personally or through others, useless efforts were made to bring about an amicable resolution, especially after the letter from the Sacred Congregation of the Council, dated March 11, 1893, in which it was inquired – whether there was any hope that the parish priest would send news regarding the matter of the parish pension, but rather, he became increasingly stubborn day by day, and therefore, he still perseveres in his wickedness. REGARDING THE LAW. "Having seen, considered, and pondered Chapter VI of Session XXI of the Council of Trent, in which it is stated: 'Those who live shamefully and scandalously, after they have been warned, should be restrained and

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punished; and if they still persevere in their wickedness, they should be deprived of benefices, according to the constitutions of the sacred canons.' " Having seen, read, and pondered the decree: 'Unless, from a long time ago,' Chapter X, concerning resignation, in order to avoid a grave scandal which otherwise cannot be settled.' " Having also examined the masterful explanation of this decree by Prosper Fagnanus, who says: 'A just and legitimate cause for resignation or removal exists when the pastor can no longer exercise his parochial duties and cannot benefit the flock entrusted to him.' " Finally, having considered the teachings of the canonists concerning a persistent, persevering, and ever-increasing scandal. " Having pondered Canon 1 of Title VII concerning the hatred and aversion of the people, as well as the decrees of the Sacred Congregation of the Council of March 23, 1885, in Milan, and July 23, 1892, in Lucania; (1) "Having finally seen and pondered Chapter XV, concerning the excesses of prelates and subordinates, in which, as Reiffenstuel most wisely explains in Volume V, title 31, page 272, offense is taken by: 1°. If subordinates deny that the Bishop is their lord; since they act contrary to the faith of homage, reverence, and obedience promised upon receiving ordination or benefices. 2°. If in a spiritual matter..." (1) The case of Lucania was reported in Volume XXV, page 412.

[*Latin ed. p. 619*]

SUESSANA 619, or ecclesiastical matters, may draw him to the Forum saeculare. - 3°. If unjust adversaries assist the Bishop, either by counsel or by aid, according to canon Gravem, heading "de tali," where it is also prescribed that one should be deprived of benefits who commits any of these offenses against the Bishop; "Having considered, examined, read, and heard everything, both in law and in fact, having carefully weighed all reasons, invoking humbly the Most Holy Name of Christ Jesus, with justice and charity before our eyes, we judge and declare that the Reverend Father Joseph, parish priest of the parish of G. in this diocese, who was already suspended from his parish office by a decree of the Bishop dated November 11, 1892, and subsequently confirmed several times, is hereby judicially and definitively removed from said office and parish benefits, and deprived of them, according to the opinion of the Illustrious Promoter of Justice, and we condemn him to all the expenses of this judgment, as is due by law. "Thus we decide and definitively sentence, not only in this manner, but in the best possible way and form. And let those who have an interest in the matter be notified of this." However, after the promulgation of the sentence, from which the parish priest appealed, further grievances arose. For he was summoned before the Judge Conciliator to return those 50 promissory notes deposited in the hands of the Bishop to settle the dispute with Gratia Migliozzi, which the parish priest had retained. But later, a more serious event occurred when the parish priest filed a defamation

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lawsuit, bringing all his accusers in the criminal canonical process before the civil court, and in this lawsuit, the priest Joseph uttered scandalous words against the Bishop; but he was forced to hear and endure many things said against himself, and to experience shameful things at the hands of his accusers, who, provoked by the audacity of the matter, were inflamed with anger, along with the court itself.

A Synopsis of the Matter: It is important to remember what is established by law, especially by the canons, regarding the accusations of lay people against clerics. Experience has shown that lay people are too...

[*Latin ed. p. 620*]

620 In SUESSANA, it is easy to find those who are eager to accuse clerics, who, as if bearing burdens, bring forth accusations against them, seemingly for their own defense, and to oppress the sacred censors of morals. Therefore, from the pronouncements of the Fathers in the Decree of Gratian, canons 1, 2, 3, 5, 6, 8, 9, and throughout cause 2, question 7, it is found that it is forbidden to laymen to accuse clerics. Moreover, according to the decrees, Alexander III, in his rescripts, responded that laymen should not be admitted to accuse clerics; thus, in chapter 14, "De testibus," he declares: "From now on, laymen should not, in some way, be admitted to accusation or testimony against clerics, as the censure of the canons more clearly teaches; unless, perhaps, they are pursuing their own or the injury of others. And even then, not to testimony; but they may be admitted to accusations." And the Pontiff admits to accusations, rejecting testimony, because the accuser, if he should fail in proving his case, ought to suffer the penalty of retaliation, according to Roman laws. Likewise, Alexander III, in chapter X, "De accusationibus," arranged matters in this way: "When P. Manconella, a priest, was present on one side, and Bonus, a priest, and I. Bonus, a lay brother of the same, were present on the other; we did not consider it permissible for I., because he was a layman, to make the accusation against the aforementioned priest." Indeed, it is not unknown to the Most Holy Fathers that this doctrine was later somewhat tempered by Innocent III in chapter 17, "De iudiciis"; but always urging the principle that laymen should be considered with great caution in criminal trials against clerics, due to the gravity of the matter, and so that laymen are not given an easy opportunity to calumniate clerics. These things are noteworthy, because the case in question involves a cleric, in which laymen vehemently accuse a parish priest and testify against him; while others, on the contrary, testify about the bad faith of these witnesses and their deceptions, with which they attempt to drive away the parish priest, who is endowed with good morals. With these considerations in mind, the presumption is to dissolve the doubt as to whether the decree should be infirm in the case before the

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Episcopal court, or whether it should be confirmed.

[*Latin ed. p. 621*]

SUESSANA 621. The Sacred Congregation of the Council, having considered the matter on September 1, 1894, decided to respond: That the place [Sessa Aurunca] is subject to removal. From which it is gathered: I. That pastors living shamefully and scandalously can be coerced and punished by the Ordinary, and can be deprived of their benefices, if they persist in their wickedness. II. That a just and legitimate cause for removal can be presented by a pastor who is unable to perform his parochial duties, and to lead the flock entrusted to him to salvation. III. That all of these things should be clear to anyone who reads the reasons, upon which the diocesan judge pronounced a sentence of deprivation and removal from the parish.

RESOLUTION. ROME, CONCERNING A CERTAIN OBLIGATION INCUMBENT UPON A CERTAIN CANONICAL PREBEND. December 15, 1894. The Chapter of St. Mary Trans Tiberim. Through summary petitions. SUMMARY OF THE FACTS. The Chapter of St. Mary Trans Tiberim reported to the Sacred Congregation that, in the year 1859, a beneficed clergy position, the "Beneficium de Peneranda," was established in that church, with an annual income of 620 florins, with the right of nomination granted to the Chapter; with the obligation of assisting the choir every day, and of saying 100 Masses annually on each of the feast days, after the completion of the choir's duties, and on other days according to convenience. Due to the addition of Masses, the obligation has been reduced to only the feast days, with the approval of the Apostolic See. The pious founder of the benefice granted the canonical administrator the faculty of retaining two florins for each Mass omitted. The holder of this benefice is considered to be exempt from the obligation of saying Mass on feast days, so that he may leave two florins to the administration for each Mass omitted.

[*Latin ed. p. 622*]

622 In ROMA, in any circumstance. Since the sum of money is insufficient, so that another priest cannot say Mass for the benefit of the faithful, the Administrator requests that the Holy Congregation of the Council confirm the reduction of Masses to only feast days, and declare that it is in accordance with the will of the pious foundress, so that any omission [of Mass] from now on may be penalized with a sum of money sufficient to find another priest who will celebrate it. The Synoptic Discussion seems to completely contradict the common law, stated under the heading of title 12, book 3, of the Decrees of Gregory IX; namely, "That ecclesiastical benefices should be conferred without diminution," which heading is clearly prescriptive and contains an express law, as the Canonists note. Under the name of "diminution" is understood any change made in the burdens or revenues of a benefice, whereby heavier burdens result or smaller revenues;

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as can be seen in Reiffenstuel, ibid., no. 2; and especially Fagnanus, who, in chapter 11, concerning "What is to be given," refers extensively to the jurisprudence of the Holy Congregation of the Council, stating there, in no. 3: "Therefore, the sacred Congregation of the same Council has often declared that a bishop cannot impose a new burden on a benefice, but must only ensure that those burdens which are incumbent upon it by foundation or custom are exactly fulfilled; and in particular, it has held that a bishop could not impose a new burden of celebrating Mass twice a week on a benefice that already had the burden of an anniversary..." Hence, when the Blessed Cardinal Borromeo wished to compel those holding simple benefices in parishes to serve either personally or through substitutes... the Holy Congregation, consulted by him, responded that they could not be compelled to do anything other than say the canonical hours... Again, when the Bishop of Ascoli imposed a burden of a small alms on a certain Priory, which is a simple benefice, for celebrating Masses twice a week in the cathedral church, and this because, although the said Priory did not actually have a church, the [request] seems to be to be rejected.

[*Latin ed. p. 623*]

ROMANA, although it possessed revenues and bore the vestiges of the ancient Church, it was not likely that it had been established without the obligation of celebrating Mass; the Holy Congregation, consulted on the matter, responded that the Bishop could not impose any new burden based on mere plausible conjectures. This latter decision also seems to oppose the petition of the Chapter, which wished to partially restore the heavier burden of the benefice, due to the plausible will of the founder. And rightly so, for the Holy Congregation acted with greater adherence to the prescriptions of the Council of Tridentini in session 24, canon 14, concerning endowments; and in session 25, canon 5, concerning endowments, where it prudently observed, "Reason demands that what is well established not be subject to contradictory regulations."

THE PETITION SHOULD BE DENIED. But it is objected that "no rule is without exception," as the aforementioned legal text states; and it emphasizes in the final part of chapter 1, title concerning endowments, that "it is permissible to retain the revenues for a time for a just and necessary cause." But whether and how the Ordinary, by the will of common law, can impose a new burden, diminishing the revenues of the benefice, is a question not easily answered, as Fagnanus himself admits in chapter 21, number 14; however, the author, interpreting these final words of the chapter, namely "unless," as "We... permit that the obligation of forty pounds not burden the dignity of the priory, but the person of the prior, lest some division of the priory seem to have been made; so that, when the prior dies, his successor is in no way bound to pay the forty pounds," argues that the imposition of a pension is a more general method of diminishing the revenues of a

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benefice. And he concludes, in agreement with the common opinion, that the Ordinary, and only the Pope, can impose a moderate burden on the beneficiary, either one that lasts for the beneficiary's lifetime, or one that does not affect the benefice itself, but the beneficiary. Therefore, according to this practice, which the Holy Congregation has long confirmed in its declarations, there are very good reasons why this new burden should be imposed, and why the ancient burden should not be restored.

[*Latin ed. p. 624*]

624 In ROMANA, the burden of the missae [masses] had been notably diminished due to the reduced number thereof; it seems possible to agree with a cleric being instituted in a benefice, that he should assume this burden, whenever he does not celebrate on festive days in his church, and that he should remit the remaining sum of money necessary for alms, to the treasurer of the Chapter, in addition to the forty coins expressly imposed by the testator, to be given to the priest celebrating in that place. This new burden, being attached to the benefice and not to the person, would less injure the expressed will of the testator. However, when the Supreme Pontiff possesses full discretion in the granting of benefices, and grave reasons exist for imposing a new burden, and the testator's will, if referred to our times, is easily presumed to be favorable to the new burden, then the Most Eminent and Reverend Fathers will deliberate whether it is expedient, and will speak with the Most Holy [Pope], who may deign to impose a new, legitimate burden upon the benefice perpetually. With these things noted, the question was asked as to what should be answered in prayer. RESOLUTION. The Sacred Congregation, having considered the matter, on December 1st, 1894, decided to respond: Regarding the extension of the remission of missae, according to the form and terms of the preceding decree: and concerning the requested declaration, according to the petition. CUSENTINA FUNERUM, December 10th, 1894. Session 25, chapter 13, Council of Trent. COMPENDIUM OF THE MATTER. This controversy was first proposed on February 24th, 1894, under these formulas of doubt: "1. Does the right to recite the office over the bodies of the faithful, to grant absolution, and to celebrate missae in the churches of the Franciscans, which are attached to the public cemetery, belong to the Regulars, or rather to the parish priests, in this case?" And, in favor of the parish priests: "2. Do the same [parish priests] have the right to celebrate funerals on the third day?"

[*Latin ed. p. 625*]

CÜSENTINA 625: The seventh, thirtieth, and anniversary [services] pertain, in this case, to those "to whom you have responded." To the Bishop who proposes that a concordat be entered into with the consent of the parties (1). Since the attempts at a concordat had failed, the same question

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was again presented to you under the date of July 14th of this year, and you responded: "While the right of the Regular clergy to celebrate the funeral office over the bodies of the deceased, and to have a burial place for the laity within the church of the Regulars, and for those who choose a burial place there, remains firm; regarding the rest, it is pleasing to agree to a concordat, to be entered into within 15 days, provided that the circumstances remain as they are; if this deadline is not met, the Bishop shall promptly prepare a draft of the concordat and transmit it to the Sacred Congregation." Informed of the mind of the Sacred Congregation, the Bishop subsequently transmitted a draft of the concordat.

I. In funerals celebrated with the body present, the parish priest shall have the right to perform all necessary functions, and he may invite one or more religious to participate, who shall be considered as members of the parish clergy, since the functions take place in the church of the Regulars.

II. On the third, seventh, and thirtieth days, the Regular clergy shall be free to perform their functions and exercise their rights. However, they may be asked to entrust the fourth funeral [service] to others, the measure of which shall be determined by the Sacred Congregation.

III. The six candles given by the faithful for the funeral on the day of death, as mentioned above, with the body present, belong properly to the parish priest; however, the other candles, used around the coffin, if left by the faithful, as is customary among various peoples, shall be divided between the parish church and the Religious.

The Ordinary has granted in Article I the parish priest the faculty of calling one or more religious to participate; for if all were called, in this case, it would be as if almost everything were ceded to them, while the parish priest is only one.

(1) See this Volume, page 103: where the entire question is related. Acta, Vol. XXVII, fase. OOCXXII, 40.

[*Latin ed. p. 626*]

626 The Bishop also reported that the Minor Observant Religious were prepared to enter into an agreement, as proposed by himself; but that the Reform Religious had noted that said arrangement had no reason to please them, because the external cemetery was distant from their church, and the bodies are carried, according to the wishes of each individual, to the church in which the funeral is to be celebrated; from that church, the body is carried to the cemetery, and does not reach our church. With these things noted, the following questions were to be considered: I. Whether the right to recite the Office, to grant absolution, and to celebrate Masses over the bodies of the faithful, in the churches of the Franciscan Religious, which are located in the public cemetery, belongs to the Religious, or rather to the parish priests in such cases. And, as to this, the parish priests were in favor

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of the affirmative. II. Whether the same funerals on the third, seventh, thirtieth days, and anniversaries belong to them, in such cases. RESOLUTION. The Sacred Congregation, after again discussing the matter on December 15, 1894, decided to respond: "While the right of the Religious to celebrate the funeral Office over the bodies of the deceased, and to have a burial place for laypersons in the church of the Religious, and for those who have chosen a burial place there, remains firm, regarding the rest, given the particular circumstances, and if these persist, the norm proposed by the Bishop must be observed, namely, the established quantity of four funeral Masses, as mentioned in Article II, according to the diocesan Synod, or the local custom."

[*Latin ed. p. 627*]

627 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF THE ORDER OF SAINT MARY OF MERCY CONCERNING THE NULLITY OF A PROFESSION. On the 8th of March, 1894. Anthony Diella, from the city of Barula, entered the Order of Mercedarians in the year 1886, having completed his novitiate, and having made simple vows for a time; finally, in the year 1891, he was admitted to solemn vows in Rome, in the Monastery of Saint Adrian, and is now also a member of the four Minor Orders. Against this profession, the cleric Diella, at the beginning of the year 1894, the Superior General of the aforementioned Order presented a recourse to the Most Holy and Most Reverend Congregation, requesting that the nullity of his profession be declared, alleging a lack of sound mind; he claimed that this could be demonstrated both by the cleric's persistent and stubborn manner of acting, whether before or after his profession, and by the opinion of physicians, who concluded from an irregular conformation of the head and the development of the brain – dolicophalic – that he had a natural and permanent cause of dementia; furthermore, to prove the mental disturbance of the cleric Diella, he attached several of his letters and documents. In opposition, Diella, with various arguments, rejected the accusation of stubbornness and dementia, claiming that this persecution on the part of the Reverend Father General and other confreres stemmed from the fact that he himself desired to found a Congregation of disciples of the Most Holy Crucifix; therefore, he insisted that he either be maintained in the Order, or, if that were not possible, that in the event of his departure, the Order be condemned to provide him with assistance not less than two thousand scudi for his honest sustenance in the future. SUMMARY OF THE FACTS.

[*Latin ed. p. 628*]

628 OF THE ORDER OF ST. MARY OF MERCY. Since the Holy Congregation, by decree of January 19, 1894, had ordered that a medical examina-

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tion of the mental state of the aforementioned cleric be carried out, and that an examination be made of the religious who were present at the profession made by him, the Superior General, concerned, in the following month of March, transmitted the requested examination, prepared by two specialists, along with other documents; and, with these matters before them, the case was referred to the plenary session of the Most Reverend Fathers for deliberation. A SYNOPTIC DISCUSSION. The advocate, at the beginning of the present controversy, presented the following principles of law. 1. Since a religious profession must be considered as a true bilateral contract, both the specific elements constituting its juridico-canonical entity, and also the general requirements of a contract, must concur for its validity. Therefore, just as a madman is considered incapable of contracting by his very nature, because he lacks reason (Inst. § 8 de Inutil, stip. leg. 43. D. de Oblig. et act.), so too is he incapable of making a religious profession. 2. When the law deals with the invalidity of acts on this basis, it makes no distinction between absolute and partial dementia, or monomania, except that acts made by a madman during periods of lucidity are excepted, the validity of which is recognized. 3. Since incapacity arising from mental infirmity is an incapacity of fact, and not of law, it must be considered only whether the dementia existed at the time of the profession; if it did, it is harmful, even if it was absent at other times, just as, conversely, the profession is valid if, at the time it was made, the religious was of sound mind, even if dementia subsequently arose, because, as Justinian states in Inst. lib. 2 tit. 2 § 1, "neither a properly made will, nor any other transaction, properly carried out, is rendered void by subsequent madness." 4. Since everyone is presumed to be of sound mind, dementia must be proven by the one alleging it with conclusive arguments; among which, medical expert opinions hold the most prominent place. As Troplong observes in *De Donat, inter vivos*, Cap. 2, regarding this matter...

[*Latin ed. p. 629*]

OF THE ORDER OF ST. MARY OF MERCY, 629, article 901: It is fitting that the judges be guided primarily by their own understanding, and that they not confuse certain unusual and bizarre behaviors with madness and frenzy. With these principles in mind, the summary proceeds, stating that the entire matter is reduced to determining whether Diella, at the time she made her profession, was of sound mind. This matter is referred to the judgment of the Most Reverend Fathers, so that the Reverend General of the Mercedarians may, with particular regard to medical expertise, render a judgment on the two questions posed to him: 1. Whether Diella could have been considered insane before taking her solemn vows. 2. Whether she is still in the same state at present. The physicians delegated for this purpose responded affirmatively to both questions, maintaining that she exhibits a religious affect, mixed with cerebral paranoia, both before and

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after her religious profession.

DEFENDER OF THE RELIGIOUS PROFESSION. On the other hand, the Defender, by virtue of his office, maintains that the religious profession made by Diella is entirely valid. For, according to St. Thomas, the requirements for a valid profession are deliberation, intention of the will, utterance, and the testimony of others. However, the Defender argues that all of these are clearly demonstrated. 1. The profession was made deliberately: Diella, from childhood, showed undeniable signs of piety and a vocation to the religious life. At the age of 15, she was received into religion; at 16, she made temporary vows; and finally, at 22, she solemnly professed; therefore, with full knowledge of the rules and constitutions of the Order, she embraced the religious state. 2. There was an intention of the will: Diella always had a tendency towards a religious life, and no argument can be adduced to the contrary; indeed, she bravely resisted her mother and brother, who were opposed to this. Therefore, this perseverance, according to the Defender, leaves no room for doubt regarding her firm will concerning her profession. 3. Finally, that the other conditions were not lacking, omitting other arguments, is abundantly demonstrated by the circumstances preceding and accompanying the profession, since these manifestly exclude...

[*Latin ed. p. 630*]

630 The Order of St. Mary of Mercy refutes any suspicion of the invalidity of the religious profession: for this was solemnly issued after a thorough examination and the completion of the novitiate, at the age of 22 years; with prior consent of the religious community before its Superior. The validity of the religious profession is proven. The Defender of the Faith proceeds to present arguments to the contrary. And first, he rejects the argument drawn from the writings and utterances of the cleric from Biel: for these reveal piety, and demonstrate his love for religion, for the Crucifix, and a fervent desire for a life of perfection; therefore, these rather confirm the validity of the profession made by the cleric from Biel, in accordance with the spirit of the Constitutions of the Order. Secondly, he rejects the opinion of the alienist physicians in this case: for, according to their own theories, all pious persons who daily attend the Holy Sacraments and strive for religious perfection should be considered afflicted by megalomania or a disordered mental state: which is so absurd that no one can fail to see. The Defender of the Faith concludes, observing that in this case, there is a lack of a true judicial process, and the form prescribed by the Benedictine Constitutions was not observed. If a hearing was given, no defender of the religious profession was appointed, no suitable witnesses were examined, articles are lacking, and interrogations were not proposed by the aforementioned defender: all of which are so strictly prescribed by the aforementioned Constitution that the process itself and the sentence subsequently rendered are considered to be vitiated by an incurable flaw of invalidity. Considering these and

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other matters relevant to the question of whether the religious profession of solemn vows, issued by the cleric, Brother Anthony from Biel, in this case, should be considered valid, the following RESOLUTION was reached. The Congregation of Bishops and Regular Canons, after deliberation under the date of March 8, 1895, decreed: It does not appear that the profession is invalid. From these matters, the following is deduced: I. Since everyone is presumed to be of sound mind, anyone who impugns the validity of a religious profession...

[*Latin ed. p. 631*]

OF THE ORDER OF ST. MARY OF MERCY

631. It must be conclusively demonstrated that those who, having emitted vows, are judged to be of unsound mind, truly were affected by dementia at the time of their profession; it is not sufficient to allege that insanity preceded or followed the profession, but it must be shown that it existed at the time the vows were taken.

II. Stronger arguments in these cases are to be drawn from the expert opinions of physicians; however, such weight should not be given to them that other conjectures are entirely excluded: and it must be understood that certain acts, which, due to mental disturbances, are not always to be considered, are rather to be attributed to the singularity of character and the fervor of disposition, and which are commonly called original, and yet cannot be called acts of insanity.

III. The circumstances preceding and accompanying the profession contribute greatly to determining its validity; therefore, if a novice has regularly completed the novitiate, and having completed a three-year period of simple vows, has solemnly professed, and if nothing to the contrary has ever arisen, it is presumed that her profession possesses all the conditions required by law.

RUREMONDEN.

DOUBTS REGARDING THE VOWS OF NUNS OF THE ORDER OF ST. URSULA.

March 22, 1895.

SUMMARY OF THE FACTS.

Certain virgins from Bordeaux, who, under the invocation of St. Ursula, for the purpose of preserving virginity and for the instruction of young girls, had retired to a certain house, and there, with Apostolic approval, had emitted perpetual simple vows, obtained from Pope Paul V, through

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Cardinal De Sourdis, Bishop of Bordeaux, a Bull, *In Supremo Militantis...*, on the ninth of February, 1618, by which that house was established as a monastery of nuns of the Order of St. Augustine, who were to observe perpetual enclosure and to emit a regular profession. Over time, the Ursuline nuns of Bordeaux...

[*Latin ed. p. 632*]

632 ROERMOND. The Order had been propagated into foreign regions. Consequently, the Bishop of Cambray petitioned and obtained, on October 12, 1667, from Clement IX, a Brief, by which the Bull of Paul V was extended to all monasteries of the same Institute, both those already established and those to be erected, in Germany. After the Brief of Clement IX, among other things, the monastery of Dorsten was established in Germany in the year 1699. In the year 1876, the Ursulines of Dorsten, due to hostile laws promulgated by the Prussian government in May, fled from Dorsten to Veert, a town in the diocese of Roermond, in the Netherlands, where, with the consent of the Ordinary, they remained, and during their exile, they received eight young women, who, after completing their novitiate, took their vows as sisters of the Convent of Dorsten. When the persecution ceased in the year 1888, and the other Ursulines returned to the Convent of Dorsten, three of those who had come from Dorsten, and those eight who, during their exile, had taken their vows as sisters of the Convent of Dorsten, remained in Weert, and with the permission of the Ordinary, they founded a new convent of Ursulines, independent of the Convent of Dorsten, into which, subsequently, other sisters were admitted to take their vows. Now, the Bishop of Roermond, observing that the house in Weert was established only with the permission of the Ordinary, and that no papal rescript is found for the erection of the Convent of Dorsten in the year 1699, although the nuns state that this was taken in the year 1817 along with other documents from the Convent by the government of Berlin, and observing that, according to the aforementioned Apostolic Letters, papal permission is necessary for the erection of Ursuline houses, both in Upper and Lower Germany, and that these Ursuline houses are truly monasteries of the Order of St. Augustine, he requested the Holy See to provide a solution to the following questions: I. Whether the vows of those three sisters who now reside in Weert, in the diocese of Roermond, which were originally taken in Dorsten, are to be considered solemn, with all the consequences of solemnity. II. Whether the same should be considered regarding the vows of those eight sisters who, while in Weert, during their exile, took their vows as sisters of the Convent of Dorsten.

[*Latin ed. p. 633*]

RUREMONDEN. 633 III. For the same judgment should be rendered concerning the vows made from the year 1888 in the new convent of Vert,

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or those that will be made in the future, whether these vows are to be considered solemn, or whether they are to be held as simple vows, due to the lack of an apostolic license for the erection of the convent. IV. If these vows are simple, and therefore are not Regular in the stricter sense, can it nevertheless be said of those who seek the habit and admission to the three vows there, that they are not merely pious women, but rather nuns in the sense of the Church, with all privileges and consequences? On this question, the Sacred Congregation of the Eastern Churches and the Regular Canons requested the opinion of one of its Consultors, whose summary is as follows: OPINION OF THE CONSULTOR. Before arriving at a solution to the aforementioned doubts, the Consultor inquires whether the vows of the Ursulines of Bordeaux can be considered solemn, and he responds affirmatively, based on three principal points: I. From the erection within a monastery of the Order of Saint Augustine, which is an order approved or recognized by the Holy See with solemn vows; and he confirms this with the authority of Benedict XIV, who, speaking in the Constitution *Quamvis iusto* § 13 concerning the vows of Anglican Virgins, states that they are not solemn because, although made according to the form of regulations approved by Clement XI, they cannot be said to be joined with an express or tacit profession in any Order approved by the Apostolic See in the state of true religion. Therefore, because of the contrary, the Consultor concludes that the vows of the Ursulines are solemn, because they are made, not only according to the Constitutions approved by the Holy See, but also in the Order of Saint Augustine, recognized by the same Holy See in the state of true religion. 2°. From the profession made there, which is a regular profession, and in the sense of the law, implies the making of solemn vows. *Lucidi de Visit. SS. LL. Cap. 5 de Monialibus § 8*. 3°. Finally, from the imposition of a papal enclosure, which is usually imposed only on nuns who make solemn vows. *Bouix de Iure Regular. Verum*. The Consultor observes, however, that this applies only for the time before the French Revolution, for, as is evident from several decrees...

[*Latin ed. p. 634*]

634 ROERMOND. Concerning the vows of the nuns in France, after political changes at the end of the last century, it appears that all the vows taken by the nuns were considered only as simple vows. Subsequently, regarding the vows taken by the Ursuline nuns of Dorsten, it is stated that it does not appear that these are solemn vows, and this is explained. According to the Bishop of Roermond in his report to the Holy Congregation, it is not certain whether Apostolic approval was obtained for the erection of the monastery of Dorsten. However, this is absolutely and entirely necessary, whether for the canonical erection of any house of religious in general, or for the erection of convents of women in particular. Regarding the first point, the Consultor states that, according to ancient custom, the broad

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interpretation of the constitutions of religious orders concerning religious houses in book 6, and also concerning excesses, the decrees of Pope Innocent X in *Instaurandae*, the ancient practice of the Roman Rota and the Holy Congregations *E E* and *R R*, the common opinion of Doctors, and especially the words of Pope Urban VIII in the constitution *Romanus Pontifex*, of Pope Benedict XIV in his work *De Synodo, Dioecesis, Lib. 9, cap. 2, n. 9*, and of the reigning Pope Leo XIII, *Romanos Pontifices*, all of which undoubtedly prove the existence of a law that obligates the obtaining of Apostolic approval, under penalty of the nullity of the erection; but secondly, it is also necessary specifically for the erection of monasteries of women, because, as the patrons themselves acknowledge, when new monasteries are erected, it is necessary to appeal to the Holy See, even for an examination by the Holy Congregation regarding the construction, for determining the number of nuns, for imposing the papal enclosure, for the transfer of the new Abbess from her previous position to the new monastery, etc. Indeed, it is clear that this is necessary not only for the present time, when, according to the Consultor, it would be reckless to deny it, but also for the time when the monastery of Dorsten was erected, because the reasons that are valid today were also valid then. Secondly, the Consultor examines the vows of those eight sisters who were admitted during the time of exile in Wert as sisters of the Convent of Dorsten, and he responds in the same way.

[*Latin ed. p. 635*]

ROERMOND. It cannot be the case that 635 solemnities are to be held, because it cannot be admitted that nuns, during a time of dispersion, or persecution, or exile, may canonically erect a new house with novices, without Apostolic permission, which can easily be obtained, and it is also fitting that it be obtained in order to receive instructions regarding what should be done during the time of exile. Regarding the third question, the Consultor believes that a response should be given in the negative to the first part, and in the affirmative to the second part; that is to say, the solemnity of the vows is entirely to be excluded, because from the report of the Bishop of Roermond, it was certainly and more certainly established that the Apostolic approval had not been obtained for the foundation of the monastery of Wert, which was absolutely necessary, as has been shown above. Finally, regarding the fourth question, the Consultor responds with a distinction: Indeed, it cannot be said that they are truly religious, or nuns, in the strict sense, or in the sense of canon law; because in this sense, they are only said to be those who have made the solemn vows. Nor can they be called religious merely in the broad sense, because in this sense, religious are also those who are bound by only one vow, or by some other bond, and who dedicate themselves to the service of God through a particular way of life. However, in the strict sense, or in the sense of divine law, they can

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truly and properly be called religious, because all that is required for this is present in them: namely, 1. the three essential vows of religion: poverty, chastity, and obedience; 2. perpetual vows; 3. vows joined with a dedication of the entire person to God and accepted in the name of God; 4. vows made in an approved order; 5. and joined with a common life. Regarding the consequences, the Consultor adds that they cannot be granted those things that are proper to the solemn vows, but only those that are proper to simple vows: the same should be felt regarding privileges. Hence, the Consultor responds to the questions posed by the Bishop of Roermond as follows: To I. It is not established. To II. In the negative. To III. In the negative to the first part, in the affirmative to the second part.

[*Latin ed. p. 636*]

636 RUREMONDEN. Regarding the fourth point. Although, according to the strict letter of the law, monks and religious are those who pronounce solemn vows, nothing prevents the Ursulines of Wert, about whom we are speaking, from being called monks and true religious, with all the consequences and privileges that belong to those who make simple vows. RESOLUTION. The Holy Congregation of Bishops and Regular Canons, after examining the matter on March 22, 1895, decided to respond as follows: To the first question: Affirmative. To the second question: Affirmative. To the third question: Deferred. Regarding the fourth point: See what has been stated above. FROM THE HOLY CONGREGATION FOR RITES OF ROMA. Various Doubts. On February 5, 1895, the following doubts were presented to the Congregation for Rites: Doubt I. The Sacred Congregation of Rites, through the Decree of Liege, April 4, 1705, concerning the fifth point, declared that the Offices of the Saints may be omitted at will, if they impede the anticipation of the Office of the Lord's Day. The same rule is found in the more recent Decree of Namur, May 29, 1885, concerning the first point. Therefore, the question arises: Does the anticipation of the Office of the Lord's Day also impede the recitation of the Votive Office at will, as those indulgences have been granted by Our Most Holy Father Leo XIII? Doubt II. The *Caeremoniale Episcoporum*, book II, chapter III, number XV, states: "In days of duplication, semi-duplication, and ferial days, the Celebrant (at Vespers) should not be prepared, nor should incense be burned." Therefore, the question arises: When only the Celebrant is prepared, without ministers, must incense be burned at Vespers, or can it only be burned, as it seems to indicate in the Decree of the Order of Minor Observants concerning Observance, April 16, 1853, concerning the twenty-fifth point? Doubt III. What norms should be followed in joining the proper hymns of the Saints, if they are found in the Breviary, when the relative feast lacks

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the proper hymns for the First Vespers?

[*Latin ed. p. 637*]

FROM SACRED RITUALS 637, Question IV. If a feast of the second class occurs on a Thursday after the Octave of the Ascension, how should the commemoration of that day be omitted in the Office of Lauds and in the Mass? Should it also be omitted in the Second Vespers? Question V. Since the commemoration of the Cross is not to be made in the votive Office of the Passion during the Paschal season, must the same commemoration also be omitted in the votive Office of the Eucharist, if it is recited during the Paschal season? Question VI. In the Office of Lauds and Mass of Saint Agapitus, Priest, on September 20th, if the commemoration of the Vigil of Saint Matthew the Apostle is also to be made, and the same prayer is said for the Holy Pontiff and for the Vigil, which of the two should be changed? Question VII. When the votive Office of the Most Holy Sacrament is celebrated on a Friday, and the Office of the Holy Crown of Thorns, or of the Most Holy Shroud of Our Lord, is to be celebrated on a Saturday, and the commemoration of the Most Holy Sacrament must be omitted in the First Vespers, should the proper doxology of that Sacrament be said in hymns of the same meter, either in the Second Vespers or in the Compline? Question VIII. When the Vigil of Pentecost occurs, and the Office is to be reduced to a simple form, should the ninth reading be historical for Matins, as was done before the reform of the rubrics? Question IX. Sometimes, on December 20th, the Vigil of Saint Thomas the Apostle and the First Day of the Temporal Cycle occur together, whose Gospel should be read in the Mass, since it must indeed be read, but it cannot be, because it is the same as the Gospel of the feast that is being celebrated. Hence, the question: Should the Gospel of the Vigil be read at the end of the Mass, or rather, that of Saint John? The Sacred Congregation of Rites, after mature deliberation on the report of the undersigned Secretary, decided that the aforementioned questions should be answered as follows: To I: Affirmative. To II: Affirmative for the first part; negative for the second part. To III: The Vespers hymn should be joined with the other for Matins, whenever both have the same meter, and the second is a continuation of the first; but if the historical order requires otherwise, the Decree Lincien, 3 June 1892, section 17 (1), should be observed. To IV: Negative. (1) See Volume XXV, 58.

[*Latin ed. p. 638*]

638 FROM THE SACRED RITUALS: To V. Affirmative. To V I. In this case, and in similar cases, the Mass celebrated for the Holy Pontiff and Confessor is changed to be celebrated for another priest. To VII. Affirmative. To VIII. Affirmative. To I X. Affirmative regarding the first part; negative regarding the second. And thus he responded, and ordered it to be observed, on February 5, 1895. G. CARDINAL ALOISI-MASELLA, S. R. C.

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Prefect. L. * S. ALOISIUS TRIPEPI, S. R. C. Secretary. BRUGES. Regarding the titular church. On March 14, 1895. The Most Reverend Lord Peter of Brabander, Bishop of Bruges. Wishing to conform in all things to the ancient prescriptions, he humbly submitted the following question for a suitable declaration to the Congregation of Sacred Rites, namely: From the Apostolic Letters of His Holiness Pope Gregory XVI, dated May 27, 1834, the Cathedral Church of Bruges "is called under the invocation of the Most Holy Savior and of Saint Donatian, Bishop." In its principal altar, there is a painting depicting Christ rising from the tomb, as well as a similar image placed before the altar itself. Therefore, some believe that the titular of this church is the Resurrection of the Lord, and not the Transfiguration of the Lord. This is contrary to what is established in the Decrees concerning churches that enjoy the title of the Most Holy Savior. Therefore, it is asked whether, in this case, the Resurrection of the Lord should be considered the titular of this church, and whether it should be commemorated in the prayers and hymns. And whether the Chapter and clergy, as has never been done in past centuries, can henceforth disregard such a title; although the feast of Saint Donatian, as the principal patron, is celebrated annually with a double rite of the first class, with an *octava*? The Sacred Congregation of Rites, in response to the report of the aforementioned Secretary, and at the earnest request of another from the Apostolic Chamber,

[*Latin ed. p. 639*]

From the Sacred Congregation of Rites, after mature deliberation, it was judged fitting to respond to the following question, namely: "The titular feast of the Cathedral Church of Bruges is the feast of the Transfiguration of the Lord, and therefore, the commemoration of the saints to be given precedence in the votive offerings should be taken from the antiphons and versicles for *Benedictus* in the Lauds and for the *Magnificat* in the Second Vespers, along with the proper prayer for that feast; while also retaining the titular Saint Donatus, Bishop and Confessor. And thus it was decided, declared, and ordered to be observed. March 14, 1895. Cardinal Aloysius Masella. Prefect. R. C. Aloysius Tripepi, Secretary. Cahors. Regarding the patron of the Church. March 28, 1895. The Reverend Paul Devèze, General Vicar in spiritual matters of the Most Reverend Bishop of Cahors, in Gallus, presented the following: In the Calendar of Cahors, approved by the Sacred Congregation of Rites on April 29, 1894, the feast of Saint Genulphe, Confessor and first Bishop of Cahors, was fixed for January 17th, under the rite of a Double of the First Class with an octave; and the feast of Saint Anthony, Abbot, was transferred to the 19th day of the same month, as its proper day. Also, the feast of the Saints Crispin and Crispinian was assigned for October 27th, under the rite of a Semiduple; since on the 25th day of the same month, the feast of Saint Capuan, Bishop and Confessor of Cahors, is celebrated, under the rite of a Double. But from this, doubts arise for

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the churches of which these saints are patrons or titulars; therefore, the priest, the Orator, requests the Sacred Congregation of Rites to provide a solution to the following doubts: I. For churches in the diocese of Cahors, of which Saint Anthony, Abbot, is the patron or titular, should the feast of Saint Anthony be celebrated, under the rite of a Double of the First Class with an octave, beginning on January 19th in the Calendar, as approved above; or beginning on January 17th, the day of the Dormition of Saint Anthony, with the feast of Saint Genulphe, with its octave, which has been transferred to another day?

[*Latin ed. p. 640*]

640 FROM THE SACRED CONGREGATION OF RITES II. Concerning the churches of that diocese, of which the Saints Crispin and Crispinian are the patrons or titulars, whether they hold the feast of those saints, celebrated according to the double rite of the first class with an octave, beginning on the 25th day of the same month, as it is inscribed in the Roman Martyrology? The Sacred Congregation of Rites, having carefully considered the opinion of another, taken from the writings of one of the Masters of the Apostolic Ceremonies, as reported by the undersigned Secretary, and having deliberated thoroughly, decided to respond as follows: 1: The feast of Saint Anthony the Abbot in the diocese of Cahors shall be celebrated on the nineteenth day of January, as assigned, even in those churches where Saint Anthony is the patron or titular. 2: In the churches of that same diocese, of which the Saints Crispin and Crispinian are the patrons or titulars, their feast shall be celebrated on its proper day. And thus it was decreed and ordered to be observed. March 23, 1895.

C. L. œ S. CARD. ALOISIUS MASELLAS. Prefect.

ALOISIUS TRIPEPI, Secretary.

[*Latin ed. p. 641*]

641 LETTER from His Holiness Pope Leo XIII to His Eminence Cardinal L. M. Parocchi, concerning the manner in which Catholics in Italy ought to conduct themselves with regard to participation in political elections.

Most Reverend Cardinal, What conduct ought to be observed by Italian Catholics with regard to participating in political elections has already been declared by the Pontifical Authority and confirmed on several occasions. It is well known that a Circular, ordered by Our Predecessor, Pope Pius IX of blessed memory, was sent by the Sacred Penitentiary to the Bishops, notifying them that participating in such elections, considering all circumstances, is not expedient. And since that decision was understood by some to mean something different, a Decree of the Holy Office, dated June 30, 1886, with Our approval, added that "Not expedient" implies a prohibition, thereby making it manifest that it is the duty of Catholics to abstain from such elections. We ourselves have repeatedly declared that while the

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participation of Catholics in administrative elections is commendable and, especially today, is to be promoted, it is to be avoided in political elections, since it is not expedient for reasons of the highest order; and among these reasons is the very condition in which We find Ourselves.

Most Reverend Cardinal, How the conduct of Catholics in Italy ought to be with regard to participating in what are called political elections has already been sufficiently declared by this Apostolic See, and has been confirmed more frequently. The encyclical letter, which was sent by the Sacred Penitentiary to the Bishops at the command of Our Predecessor, Pope Pius IX (whose memory is blessed), is well known: in which it stated thus: "Participating in such elections, considering all circumstances, is not expedient." Since, however, that definition was twisted by many into the opposite sense, another decree, issued by the Congregation to which the Holy Office gives its name, dated June 30, in the year 1886, with Our approval, added this: "Not expedient" implies a prohibition: thus making manifest to Catholics the duty of abstaining from those very elections. We ourselves, subsequently, declared again, in person, that just as the participation in municipal elections is worthy of praise, and is especially to be promoted today, so the same participation is to be avoided in political elections, because it is not expedient for reasons of the highest order.

[*Latin ed. p. 642*]

642 Concerning the matters which have been done to the Pontiff, these certainly do not correspond to the full freedom and independence proper to his Apostolic ministry. Nevertheless, we are all too aware that discussions continue regarding Our intentions, that Our words are being diminished in significance, and that efforts are being made to evade and to allow others to evade the Pontifical decrees. Indeed, with every argument and artifice, many strive to make it believed that certain temperaments have intervened on Our part, so that it may be openly declared that it is permissible for Catholics to participate in those elections. Therefore, My Lord Cardinal, We deem it fitting to publicly declare that nothing has been changed by Us regarding the aforementioned decrees, and therefore We urge all who are truly Catholics to acquiesce in them and to conform to them with docile obedience. Meanwhile, as a pledge of Our particular benevolence, We impart, from the heart, the Apostolic Blessing to you, My Lord Cardinal. From the Vatican, May 14, 1895. LEO XIII, Pope.

utpote qui ob causas supremi ordinis omnino non expedit; quarum ultima non est, ipsa praesens rerum conditio, Romano Pontifici imposita, quae plenae Ministerii Apostolici libertati atque immunitati profecto respondere non potest.

Attamen probe novimus idemtidem circa mentis nostrae sensa adhuc controversias agi, verborum nostrorum vim imminui, et quae praecipimus eludi atque eludenda contendi.

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Utique omni studio et arte suadere plerique nituntur, quaedam a Nobis temperamenta prodiisse, unde aperte constet, catholicis ad easdem electiones accurrere fas esse.

Nos igitur, Eme Cardinalis, opportunum denuntiare arbitramur, nihil per Nos, de his, quae hac super re ante edixerimus, immutatum fuisse : ac proinde omnes , quotquot veri catholici sunt, hortamur, ut iisdem praeceptionibus acquiescant, ac docili obsequio sese submittant.

Interim specialis benevolentiae erga Te nostrae pignus, Tibi Eme Cardinalis, apostolic a m Benedictionem e x corde impertimus.

Ex Aedib. Vatican, die 15 Maii anno 1895. LEO PAPAXIII .

[*Latin ed. p. 643*]

LETTER from His Most Holy Lordship, Leo XIII, to the Prefect of the Philippine Sodality, as a testimony of his piety towards Saint Philip Neri. Greetings and Apostolic Benediction. We acknowledge that the piety of the citizens of Rome has, for many years, spontaneously and diligently sought to observe secular solemnities in memory of SAINT PHILIP NERI, and we recognize not only the honor due to his excellent virtue, but also the just and worthy expression of gratitude. Indeed, there is no doubt that NERIUS was a bulwark and ornament of the entire Christian republic, and that, especially during times of great peril. Moreover, his deeds and actions truly confirmed the benefit he brought to the people of Rome.

This is evident, for example, in that, having been commanded to care for things, for the house, for relatives, he exchanged his homeland for the city of Rome in his youth, as if foreseeing, with a divine will and inspiration, that this would be the field assigned to him for cultivation. His activities in the city, and his arduous labors, speak more clearly. For, from the very beginning, when he clearly resolved to undertake arduous, yet most fruitful, endeavors for the good of souls, he embraced citizens of all ages and all ranks with remarkable sweetness and charity; and he labored with such incredible zeal and constancy in calling them to the service of Jesus Christ, even to his old age, that he seemed to dedicate himself entirely to this one work.

Indeed, at that time, when the morals of the common people were declining, and when new doctrines were spreading throughout almost all of Europe, if Rome had not resisted the influence of fatal dogmas; if she had not seen the morals of many improved and composed, and if she had not seen the revival of many arts of piety that had become obsolete, much of this is due to the words, deeds, institutions, and examples of Philip. From this, it is easily understood why he left so many and such deeply imprinted traces in Rome, that even now, within the walls of Rome, one seems to perceive the presence of a most holy and excellent man, as if he still lives and breathes. For great souls, when they are taken to heaven, remain in

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the love and desire of men, in the perpetuity of time, in useful institutions, and in the students of their discipline. Therefore, we find a pleasant solace and a fitting opportunity in this, which we have said, concerning the public significance of religion. Furthermore, we greatly desire that, just as a bird...

[*Latin ed. p. 644*]

644 LETTER. The voice and works of the most innocent priest wonderfully benefited his elders for salvation; may it be so that this memory may be salutary for his descendants. The memory of holy men is rightly venerated by those who follow their precepts, and from their contemplation of virtues, they acquire something to imitate. You, as many as are of the Institute of Saint PHILIP, it is fitting for posterity to rejoice in these endeavors towards him, as if it were a certain domestic glory. But consider more deeply how much he gave to this society, in which he wished his spirit and his diligence in the apostolate to remain perpetually. To honor his memory in likeness and, as much as possible, to express it in conduct, the very times themselves urge us, for they are not at all dissimilar to those in which PHILIP lived. For our own age is also hostile to virtue, and the change is certainly no less. Therefore, let the clergy, above all others, reflect on the example of PHILIP, and let them strive to renew that admirable charity of his, which not only changed the face of the City at that time, but has brought forth benefits that will endure for the Christian name in the future. — With regard to the present celebration, nothing could be more pleasing or more desirable than if we could, following the custom of our predecessors, approach his sacred remains with reverence. Since, however, the times prevent us from doing so, we wish at least that there be some testimony of our piety towards PHILIP: therefore, for his honor, we send you a certain amount of property, to be used for sacred purposes. May he look upon us favorably from heaven, and may he perpetually protect the City and the world. We impart to you, our beloved sons, the apostolic blessing in the Lord, as a pledge of heavenly gifts and a witness of our benevolence. Given in Rome, at Saint Peter's, on the twenty-fifth day of May, in the year 1885, in the eighteenth year of Our Pontificate. LEO XIII, POPE.

[*Latin ed. p. 645*]

64S FROM THE BRIEF ISSUED BY THE MOST HOLY FATHER, LEO XIII, whereby Catholics are urged to offer special prayers during the Solemnity of Pentecost. It is most fitting that the Church, with due piety, should never cease to offer this prayer to God, so that the Christian people, whatever their condition, may have unity of mind and piety of action. Likewise, We, who in this earthly life represent the divine Pastor, strive to imitate His spirit, and We do not cease to foster this same purpose among the nations; and We now urge it more earnestly among those nations which the Church

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itself has long desired to draw to itself. It is not obscure, and it becomes clearer each day, from what sources We chiefly seek blessings and expect growth: namely, from Him who is rightly invoked as the Father of mercies, and from whom it is the duty of all to seek the illumination of minds and the benevolent turning of wills towards salvation.

And indeed, Catholics cannot fail to see how weighty and important are the matters entrusted to Us; for in them, along with the increase of divine honor and the glory of the Christian name, the eternal salvation of many is at stake. If they consider these things properly and piously, as is fitting, they will surely feel more keenly in their hearts the force and flame of heavenly charity, and will refuse nothing that God offers, and will spare nothing for their brothers. Thus, it will come to pass that they will join with Us, not only in confident expectation of good results, but also in all that humble and holy prayers can obtain from God.

No time seems more fitting for such an act of piety than that in which the Apostles, after the Lord's ascension into heaven, stood together, persevering in prayer with one accord with Mary, the Mother of Jesus (1), awaiting the promised outpouring of the Holy Spirit and all the gifts of grace. In that august Upper Room, and through the mystery of the Paraclete, the Church, already conceived by Christ, and prompted by Him, began happily to fulfill its mission among all the nations, bringing them to one faith and to the newness of Christian life. (Acts i, 14).

[*Latin ed. p. 646*]

646 Brief acts have followed, rich and significant; in which the highest union of wills, never sufficiently praised for the example it provides: "And the multitude of believers had but one heart and one soul. Neither did any one say that aught of the things which he possessed was his own: but all things were common unto them." (1). For this reason, We have deemed it fitting to stir up the piety of Catholics with exhortation and invitation, so that, through the examples of the Virgin Mother and the holy Apostles, they may, during the coming novena before the sacred feast of Pentecost, desire to implore God with one mind and singular devotion, with these insistent supplications: "Thou shalt send forth thy spirit, and they shall be upon the face of the earth. And thou shalt renew the face of the earth." — Indeed, the greatest and most salutary benefits are to be hoped for from Him who is the Spirit of Truth, who has revealed the mysteries of God in the sacred Scriptures, and who confirms the Church with His perpetual presence; from whom, as a living fount of sanctity, souls are wonderfully increased and perfected in divine adoption as sons. For from the manifold gifts of the Spirit, divine light and ardor, healing and strength, solace and rest, and every disposition for goodness, are derived, along with the perennial fruitfulness of holy deeds. Finally, the same Spirit acts within the Church in such a way that, just as Christ is the head of this

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mystical body, so too He Himself has a certain hidden influence as its heart; and therefore, the Holy Spirit is likened to a heart which invisibly vivifies and unites the Church (2). — For He is, indeed, entirely Charity, and the works of love are manifestly attributed to Him; therefore, it is greatly to be hoped that, by Him, with the spirit of error and wickedness restrained, a closer concord, befitting the sons of the Church, will flourish, and the unity of souls will increase (3). May those who, according to the Apostle's admonition, act in nothing by contention, but rather with wisdom, and have the same charity, be of one mind (4); and thus, may they greatly increase Our joy, and also make the state secure and flourishing. From this, as an example of Christian concord among Catholics, from this outpouring of the divine invocation of the Paraclete, We hope for the greatest progress in the reconciliation of our dissenting brethren: so that they too may wish to feel within themselves what is also desired by Christ Jesus (5), with whom, as with us, they are bound by the most blessed bonds of perfect charity, in faith and hope.

(1) Acts 4:32.

(2) *Summa theologica*, Part III, Question VIII, Article 1, ad 3.

(3) Philippians 2:3, 5.

(4) Ibid. 5.

[*Latin ed. p. 647*]

BRIEF 647: Those who have responded favorably to Our exhortation will certainly be endowed by God with such a measure of piety and fraternal love; therefore, it pleases Us to add and grant sacred indulgences from the treasure of the Church. Therefore, We grant to all those who, for nine consecutive days preceding Pentecost, have piously recited certain specific prayers daily to the Holy Spirit, publicly or privately, an indulgence of seven years and as many quarantines on each of those days; and a plenary indulgence on any one of those days, or on the very day of Pentecost itself, or on any one of the eight days following, provided they have been properly absolved from sin through confession and have received Holy Communion, according to Our intentions as stated above. Furthermore, We grant this: that if anyone, out of piety, fulfills these same conditions of prayer again for eight days following Pentecost, they may again obtain both indulgences. We decree and ordain, with Our authority, that these benefits may also be converted to the aid of pious souls undergoing purification in Purgatory, and that they shall remain valid for future years, with all customary observances and legal requirements remaining in force. Given at Rome, at Saint Peter's, under the Fisherman's Ring, on the fifth day of May in the year 1837, in the eighteenth year of Our Pontificate. C. CAR. DE RUGGIERO. *HN-FROM THE HOLY CONGREGATION OF THE ROMAN COUNCIL FOR THE REDUCTION OF THE BURDEN, December 15, 1894. To the Supreme Pontiffs, the decorum and magnificence of the Lateran Basilica have always

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been most dear, since it is the Mother and Head of all the Churches of the City and the World, and they have never failed to provide it with a fitting endowment to sustain the expenses of the most august Temple.

[*Latin ed. p. 648*]

648 The Basilica of Saint John Lateran in ROMA, founded by the Emperor Constantine, was built at the expense of the Supreme Pontiffs, who endowed it with privileges and revenues, and which was destroyed by fire. Clement V restored it again, to a more spacious and ornate form. Due to the increased size of the Temple, the expenses increased. Pius IV, in order to enrich the endowment for the maintenance of the building, applied the revenues from the rings, with which the sublime dignity of the Cardinals is marked, to it. Urbanus VIII, by an Apostolic Brief dated October 2, 1625, ordered that these revenues be assigned to the Lateran Basilica, to be paid in the future to the Holy Congregation for the Propagation of the Faith, and to compensate for this reduction in the endowment, he prescribed that a sum of one thousand five hundred scudi be attributed to and paid to the aforementioned Fabric [building fund] from the revenues collected in the Spanish Kingdoms, on account of the extension of the Bulla Cruciata. This was faithfully observed, until Innocentius X, by a Brief dated March 24, 1647, returned the same sum to the Fabric of the Vatican Basilica. For this had provided a great sum of money to the Lateran Church for carrying out urgent repairs and sumptuous decorations. This suspension or reversion of the endowment appears to have been done in order to settle a debt owed by the Chapter of the Lateran, contracted with the Fabric of Saint Peter. With the passage of time, the Lateran Basilica, deprived of this endowment, became completely unable to maintain the Church, so that, by a Brief dated December 4, 1727, Benedict XIII restored, in its entirety, the part of the endowment that had been lost, namely the sum of 1500 scudi. However, the sum of 1500 scudi was reduced to an equivalent sum in ducats of lesser value. At first, the Reverend Fabric of Saint Peter paid the established sum without seeking any compensation. But not long after, it insisted, first, that the canons of the Lateran should, in proportion, compensate for this collection of money, paying 8 scudi and 54 oboli each year, as a gift (commonly called "mancie"), to the officials of the Bulla Cruciata, to be paid by the Fabric of Saint Peter. Furthermore, second, it insisted that it should receive the profit derived from the money loaned out and reloaned, as they call it; that is, to...

[*Latin ed. p. 649*]

ROME 649, because the aforementioned Fabric [institution] promised to pay, each year in the future, the aforementioned sum as soon as it was collected in Madrid; thus, it was always subject to the risk of loss. After various discussions, the Lateran Chapter and the Fabric of St. Peter entered

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into a certain agreement, which was excepted and confirmed by the aforementioned General Congregation of the Fabric on January 23, 1771. Due to the significant importance of this agreement, it is fitting to reproduce the text in its entirety: "When the Illustrious and Reverend Economus of the Congregation of the Fabric of St. Peter insisted with our Reverend Chapter that, from now on, the aforementioned Fabric should remit, with its favor, the sum of eight scudi and 54 oboli, which are paid in Madrid for the expenses of the officials of the Cross, and from which the Fabric is only required to pay the sum that our sacred Church pays, namely 1500 ducats, and furthermore, that, with the favor of the same Reverend Fabric, it should cede to us the profit that it will make from exchanges and re-exchanges, as they are called, and which, by reason of the aforementioned sum, belongs to us, because the Congregation of the aforementioned Fabric promises to pay us, each year in the future, the aforementioned sum as soon as it is collected in Spain, so that the aforementioned Reverend Fabric will always be subject to the risk of that loss; hence, the Illustrious and Reverend Lords, considering the circumstances, decided, with the favor of the aforementioned Fabric, to remit, each six years, only the sum of eight scudi and 54 oboli, as well as the profits from exchanges and re-exchanges, provided that the promise of paying our Reverend Chapter the sum of 1500 ducats each year is fulfilled as soon as it is collected in Spain, by the full Congregation of the aforementioned Reverend Fabric." After this agreement was put into effect, two other legal documents concerning the payment of this sum intervened until the year 1892, when the present controversy arose. The first dates back to the year 1800, when, due to political circumstances, the Fabric of St. Peter was unable to collect its credit in Spain from the Bull of the Cross, it petitioned and obtained from the Lateran Chapter a certain deferral of its payment.

[*Latin ed. p. 650*]

650 In ROMANA, a reduction was granted, but under the condition that it should in no way prejudice the right already established by the initial agreement. Another document refers to the year 1843, when, due to the overthrow of the government in Hispania, the Reverend Fabric of St. Peter suffered a significant loss in the amount to be collected from the Bulla Cruciatae, and therefore, it petitioned the Lateran Chapter again for a substantial reduction, which it obtained under a pact expressed in the following terms by the Reverend Fabric itself: namely, that this concession should be understood as granted for only one occasion, and should not be able to prejudice the initial agreement, which had been in force for a long time. The reason for the present controversy must be explained from the letters sent by the Reverend Fabric of St. Peter to the Lateran Chapter, dated August 13, 1892, in which it stated that, in order to reduce the amount to be paid from the revenues of the Bulla Cruciatae, it should be reduced proportionally to

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the reduction suffered by the aforementioned Fabric due to the diminished value of the Spanish currency in comparison to the Italian currency, or due to the increased exchange rate, as they call it.

A Synopsis of the Dispute: The aforementioned chapter, in the first place, through the opinion of a jurist presented, willingly concedes that all profits from the exchange of commerce belong to the Reverend Fabric, provided that the designated sum of 1258.97 scudi, corresponding to 6766.96 Italian lire, remains intact for the benefit of the Lateran Basilica, as a fixed and invariable amount, just as happens with benefits, whose holders are obligated to pay a fixed sum to pensioners, without any reduction. However, the Pontiff clearly intended to exclude any reduction in the sum to be paid to the Lateran Chapter, as evidenced by the clauses appended by Benedict XIII to his letters; namely, the clause which was struck out and declared invalid, "contrary to any, even the smallest, future change to be introduced to his disposition." The words of the Pontiff on this matter have already been mentioned in the specific case. Regarding the legal effect of these clauses, it is sufficient to refer to the DEFENSE OF THE LATERAN CHAPTER.

[*Latin ed. p. 651*]

ROME 651: One decision of the Sacred Roman Rota, to which all canonists agree, namely: "A privilege containing a clause is invalidated and annuls any contrary possession." Rota Decis. 1008 n. 6 cor. Molines. Furthermore, the Advocate argues that, even if the Reverend Fabric of St. Peter were to receive not one hundred thousand florins, but half of that sum, it would nonetheless be obligated to pay the designated and fixed sum of 1258.97 florins, as established by the highest authority, in favor of the Lateran Church. Frequently, there exist in both civil and canon law stricter examples of similar cases, which could be brought to light here; for example, an *emphyteuta* is not excused from paying the canon, even if the land is partially eroded by a river or damaged, and the house is destroyed, provided that the area remains, and the same applies if the house is burned (Fulgin. De solut. canon. cap. 9 n. 7), hence the common saying: "If the entire thing perishes, the *emphyteuta* is released; if only a part perishes, he cannot free himself by any means." The same principle can be applied to the case where a designated sum is considered a burdensome payment, whether it is a pension, a dowry for the expenses of the Sacristy or the Fabric; in this case, the debtor is obligated to faithfully fulfill the assumed obligation, unless he completely loses the substance and the fruits, as taught by De Luca, Disc. 91 n. 4: "For the lord of the fruits must yield to the damage of his fruits; the diminution does not affect the pensioner, just as, conversely, he must yield to the increase of his fruits, without the pensioner being able to claim any share in that increase, since increase and decrease are the rule of ownership. - For it is not permissible for one to accept the profit and at the same time disregard the burden attached to it." The Advocate continues,

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stating that the single law concerning the expiration and cancellation of obligations, found in the code, could be applied in this case, citing the teachings of Cardinal De Luca, Disc. X X I, on pensions. In fact, in the specific case of the College of Germans, to which the Abbey of St. Cross was assigned with the burden of a pension, the administrators had raised the claim that, due to the notably diminished fruits of the aforementioned Abbey of St. Cross, they should also be allowed to diminish the amount due.

[*Latin ed. p. 652*]

652 Pensions in ROMANA. Hence, through Alexander VII, a particular Congregation of certain Cardinals was convened, and from it emerged a resolution regarding the aforementioned matter, a resolution which was negative. The aforementioned author, presenting reasons for doubting this, adds: "Notwithstanding the above, I stated when writing concerning the pensioner of the College of Neophytes that the opposite was truer; denying, in the first place, the application of this reasoning to the social union of this Abbey, which is established through shares, albeit unequal, among these Colleges, since the pension does not touch the right or substance of the benefice in which, or its administration, or the privileges of the pensioner; for he acquires no right therein, which entirely remains with the titular, in whose place the College of Germany succeeded in this Abbey, to which a union has been made, and consequently, this society or communion has no foundation, neither in fact nor in law. Furthermore, because the effect or consequence of a society should not be subject to the danger of diminution, but also to the advantage of increase, and should not suffer damage if it does not expect a share of the profit; Mutins, H. de reg. iuris, etc., according to the nature of society. Therefore, if the fruits of this Abbey had experienced a notable increase, the aforementioned Colleges could certainly not claim a share of it, since their right was limited to a certain amount. And consequently, they should not suffer a loss from the decrease. Thus, also, the teacher observes that, while in fact it has been justified that, according to the variations of time, the fruits have sometimes been much greater, and yet the pensions have received no increase, therefore this reasoning has no true foundation, etc." Therefore, the aforementioned principles of common law are observed with certainty and practical execution, the speaker notes, citing a special decree of the Supreme Pontiff concerning benefits existing in Italia: "Since, recently, on January 28, 1871, it was promulgated. By this decree, a rule was established that the loss or diminution of the revenues of benefits affects the common beneficiaries and pensioners, etc." (1). This exception, which is established by papal authority, is for the benefit of those

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who are in need (1). This decree is found in Volume VII, page 325.

[*Latin ed. p. 653*]

ROME 653: This decree, issued concerning the condition of ITALY, is not to be extended to controversies involving foreign nations which are governed by common law. "What it wished to express, it stated; what it did not wish to express, it omitted through deliberation." The Rota, December 174, page 18, records this. Then, the advocate, proceeding to another point of law, noted that the observance of this obligation, which is more than secular, not only demonstrates an undeniable argument in favor of the interpretation of the Lateran Chapter, but also, even if the Apostolic Brief were absent, it presents a better claim to the world. For it is clear from the records that, beginning in the year 1625, that is, two and a half centuries ago, Urban VIII assigned a donation of one thousand five hundred scudi for the Lateran Church. And subsequently, Benedict XIII formally and with the utmost solemnity, granted virtually the same sum, namely, two thousand ducats, perpetually in favor of the aforementioned Basilica. But this latter sum, through the generosity of the canons, was reduced to 1259.97 scudi, that is, to 6766.96 florins, in order to proportionately contribute to the requests of the administrators of the Fabric of St. Peter for remuneration, commonly known as "mancies." These administrators, having scarcely received that sum in Madrid, promised to fully pay it to the Lateran Chapter, provided that the Reverend Fabric of St. Peter would yield the profit that "it would obtain from exchanges and re-exchanges." This request was approved and accepted by the canons of the Lateran in the chapter meetings on September 2, 1770. And conversely, the administrators of the Reverend Fabric of St. Peter confirmed this with a decree of resolution on January 23, 1771, declaring that the secular observance, from the time of Urban VIII, that is, from the year 1665, had already lapsed. This assumption of risk, arising from the agreement of the parties, is a proper reciprocal consideration and must be interpreted broadly and generally, encompassing, widely and indiscriminately, whatever profit is involved. Indeed, it would not be permissible for someone to include profit, but to disregard the obligation. "In a correlative contract, it is unjust for anyone to demand that what has been stipulated in their favor be fulfilled."

[*Latin ed. p. 654*]

654. In ROMA, however, the contrary is asserted: "Rota cor. Riminaldo, De. 148, n. 6." And the highest light of jurisprudence, Benedict XIV, in *De synodo dioeces*, book 10, chapter 7, teaches thus: "But in order that a society may be just, both the profit and the danger, and the loss, must be common; for as Ulpian says in law 29, 'H. pro socio,' if one party only experiences the profit, while the other experiences the loss, the society will be called 'Leonine,' from Leo, who wished to participate in the hunting of

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wild beasts without any danger to himself." But the danger which the Reverend Fabrica has undertaken, according to the terms, is not restricted to another's damage or prejudice, but extends to any loss, whether the principal is diminished, or the interest is reduced, or the exchange of money through bills and promissory notes depreciates due to the vicissitudes of commerce, and temporary fluctuations. For the law, nor the agreement, makes any distinction, nor ought we to make one. Furthermore, the word "pericolo" in Latin, *periculum*, encompasses any loss and detriment. Therefore, if the danger which the Reverend Fabrica undertook in this contract, to be compensated, includes more serious damages, it is not clear why "minora" is asserted; and we are completely ignorant as to why the obligation to compensate for damages is restricted to the principal and interest, and not to the eventual diminution of the principal and interest! Hence, the orator observes, it is laughable that the opposing party concludes: "Just as the principal, as a representation of the profit arising from a favorable exchange, receives a benefit from the caution against the devaluation of money from the Reverend Fabrica." But this subterfuge, he argues, demonstrates all the more that the Reverend Fabrica is obligated to compensate for the smaller damages, which are more likely to occur, just as enormous profits have occurred, about which the administrators of VATICANI have remained silent. Does not the Reverend Fabrica, by his own confession, obligate himself to protect the entire sum which has been expressly designated? Is he not, therefore, all the more obligated to protect the smallest part which is included in the whole? This smallest part of the damage, arising from accidental cases of bills and promissory notes, and...

[*Latin ed. p. 655*]

ROMANA 6§5, as has been confirmed in recent years, with little difference, as the counselor of the Kingdom of Spain attests. Indeed, O Orator, the injustice could be demonstrated to such an extent that, conversely, the indemnity agreed upon extends even to a greater loss. In civil law, Ulpianus, in leg. 150 ff. de verb or., teaches that if the stipulation is: "As much as I do not receive from Titus, so much you promise to give," it is not usually doubted that if nothing is received from Titus, the entire amount is owed that Titus should have given. Therefore, the procurator of the Lateran Chapter concluded: that if the Lateran Chapter relinquished all profits that could be collected from exchanges and recambios [currency exchanges], it was done so that a fixed and unchanging sum of money would be established. This agreement, when accepted by the Vatican Chapter, has the force of law. Regarding this matter, just as the Vatican Chapter has, for many years, benefited from the exchanges of money under the force of this agreement, so today it must also bear the loss. The orator observes that, from the year 1771 until the year 1892 just past, a period of two centuries and 21 years, the Reverend Fabric [financial institution] of St. Peter ful-

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filled its obligations and paid the fixed sum, whatever increase or decrease occurred from the exchanges and recambios. Moreover, the agreements and concessions made by the Canons of the Lateran in the years 1800 and 1845, in response to the requests of the Reverend Fabric, because at that time a loss, not a profit, had resulted from the exchanges, confirm and add the strongest support to the observance itself. Indeed, from a legal adage, to concede and to yield are different things: because to concede is temporary, but to yield is perpetual; Barbosa, cl, vol. 531, n. 41. Indeed, in these concessions, the Lateran Chapter not only preserved its rights, but also, in two decrees of June 27, 1800, it confessed and acknowledged the Reverend Fabric of St. Peter, declaring that it had obtained a reduction out of a special benevolence, with the express declaration that nothing had thereby been changed for future payments.

[*Latin ed. p. 656*]

656 ROMANA. If the Reverend Fabrica, as a consultant, could have demonstrated some right, and had truly experienced the action, she would have added some preservative clause, for example, "saving the right," "without prejudice to the possibility of appeal," or she would have inserted a letter of protestation. But quite the opposite occurred; she herself confessed that she had no canonical reason to diminish [something], nor could she achieve this by law or judgment to the detriment of another. Furthermore, it is most evident that there can be no more valid proof than "the confession of one's own mouth." Indeed, the proof of an obligation is obtained, either from the words of the conciliators, or from witnesses who, with their own certain knowledge, testify; or from the confession of the contracting party himself, which indeed surpasses all other kinds of proof (cap. Per tuos de probat. Rota coram Bichio, Bec. 464, n. 19; coram Molinet, Dec. 1122, n. 6; and in recent, Dec. 749, n. 12, part. IS). Because, on the contrary, the Reverend Fabrica of St. Peter, who claims to be only a mandatary for collecting [payments], responds in her observations that the procurator of the Chapter, but with a particular mandate, of which there was an agreement between the parties, and which has been observed for more than centum annis, assumes all damages and benefits concerning the dogs, and always gives to the Lateran Palace a certain sum, without diminution. Therefore, the patron concludes that the observance of this prestation for two centuries is sufficient in itself to establish a better title of property. For, as this observance is most evident in the fact confessed by both parties; so it is accepted in law, that indeed, through centenaria observance, every better and more powerful title is presumed, because of the possibility (as De Luca teaches, De benef., disc. 32, n. 2) "of alleging an Apostolic privilege, or any other title of property, which it suffices to allege without the necessity of proof, so that such a presumption results from centenaria possession." And the same Rota, in Praenestina, March 22,

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1779, coram Martinez: "He who uses centenaria possession; he certainly possesses, with whatever better and more powerful title, and with a title supported by law; whether it be a pact, or a privilege? All these things, and if you desire anything else, are presumed from centenaria possession." This also.

[*Latin ed. p. 657*]

ROME 657. The principle has always been consistently maintained by the Sacred Congregation, whether in a prescriptive, a presumptive, or, most especially, an interpretative manner. Hence, the principle is: "That which has been observed should be given more weight than that which has been stipulated in the foundation." *Sacred Congregation, in the matter of the benefice of Regien, January 26, 1861.* Hence, also, the principle is: "He who can allege a centennial [claim] may not, on the contrary, allege a privilege; he who can allege a privilege may not, on the contrary, allege a centennial." *Riganti in Reg. Cancellar, vol. 1, no. 139.* DEFENSE OF THE CHAPTER OF THE VATICAN. However, on the contrary, the Reverend Procurator of the Fabric of St. Peter, points out that these general principles of law are violated and the insistence of the Chapter of the Lateran is stifled. For, there is no doubt that Benedict XIII, from the entire sum of ducats possessed by the Fabric of the Vatican, detached a portion, namely, 1500 ducats, for the benefit of the church of the Lateran. Consequently, the Pontiff ordered that once this entire sum has been collected, it should no longer be inscribed in its entirety under the name of the Fabric of St. Peter, but that, for the portion attributed to the Fabric of the Lateran, it should be referred to as "free credit" to that Fabric. Furthermore, the procurator argues that all transactions concerning this sum of money, until it is transferred to ITALY, whether favorable or detrimental, must be borne, in proportion to the portion attributed to each, by the Fabric of the Vatican and by the Lateran. He also points out that it does not matter that the bankers or money-changers of SPAIN send the entire sum to ROME, inscribed under the name of the Fabric of St. Peter; for the Pontiff, Benedict XIII, in making his disposition regarding a certain portion of this money, for the benefit of the Chapter of the Lateran, did not give an order to be executed by the bankers of SPAIN, but, from a certain portion detached from the entire sum, he ordered the Fabric of St. Peter to consider 1500 ducats assigned to the church of the Lateran, as already fully and freely assigned to it from the moment of the collection. Therefore, the procurator concludes, in the act of collecting and transferring the money from SPAIN to ITALY, the Fabric of St. Peter, *Acta, vol. XXVII, fase. CCOXXIII, 42*.

[*Latin ed. p. 658*]

658 In the Basilica of the Lateran, by its very name, the administrators bear a responsibility; therefore, it would be most uncivil and unjust

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to transfer to them any loss or damage resulting from any financial transaction. Then, the procurator, addressing the objections of the opposing party, points out the agreement of the year 1770, by which all profits from exchanges and re-exchanges were ceded to the Fabric of St. Peter, and argues that this does not imply that all losses arising from such transactions should also be borne by the same Fabric; on the contrary, he believes that it proves the opposite. For, from the text of the agreement, it is clear that the Chapter of the Lateran asserted its full right to any profit derived from exchanges and re-exchanges up to the year 1500; and that this profit was to be considered as a price and compensation for the burden assumed by the Fabric of St. Peter, namely, to undertake any risk concerning the principal capital, even with respect to the part pertaining to the Lateran Church. Therefore, he concludes, the contract attributed to the Fabric of St. Peter a very small and uncertain benefit to be received from exchanges, while imposing upon it the very heavy burden of paying the full sum of 1500 ducats, even if it could not demand anything from the Spanish currency. Therefore, he turns the statement "that inconveniences must follow where advantages follow" against the Fabric of the Lateran, asking it to abandon its claim, by which it sought to impose upon the Fabric of St. Peter the burden of bearing any loss resulting from the exchange of Spanish currency with Italian currency. Finally, the procurator brings forward transactions concluded in the years 1800 and 1843, by which the Fabric of St. Peter obtained a certain reduction in its obligations, arguing that these demonstrate that the Fabric of St. Peter never acquiesced in the intention of the Fabric of the Lateran, namely, that the latter should be exempt from any risk or profit; for the Fabric of St. Peter, for the sake of peace, having accepted a significant concession made to it, did not fail to assert its "right" to what the Fabric of the Lateran had arrogated to itself. And if such protests were not lacking even on the part of the Chapter of the Lateran, it must be concluded that...

[*Latin ed. p. 659*]

ROME 659: The protests of one party against the other clash and destroy each other, and only the fact of diminished performance remains, whatever the strength of the protest. Finally, because the administrator receives certain objections to a proposed agreement, it is helpful to quote his words, in the Italian language, so that nothing may be added or taken away: "Although, through the reflections briefly outlined so far, it is evident that neither legal reason nor any act supports the claim of the Lateran Fabric, nevertheless, the administration of the Fabric of St. Peter does not intend to revoke the offer that, in order to demonstrate that it does not wish to adhere strictly to the law regarding the Lateran Fabric, generously made; and that consists in this, that the profit from a favorable exchange and the loss from an unfavorable exchange shall yield respectively to its

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benefit and to its detriment up to 5%; and furthermore, shall yield to the benefit and detriment of the Lateran Fabric. In this way, the Lateran Fabric would be relieved of a good portion of the loss that it would entirely have to bear, having no right that authorizes it to transfer it entirely or in part to the Fabric of St. Peter." With these things noted, the following was proposed: Whether a reduction of the burden should be granted in this case. RESOLUTION: The Holy Congregation, after deliberation under the date of December 1, 1894, decided to respond: Negatively. 15 De- + , + »+. PARISIEN. DISPENSATIONIS MATRIMONII Session 24, Chapter 1, On reforms. Day of December 10, 1894. Since, at the end of the year 1892, Maria, having been orphaned of her parents, was living with her cousin, Lord Marchand, in the city of Fontainebleau, a marriage was arranged. COMPENDIUM OF THE FACTS.

[*Latin ed. p. 660*]

660. In Paris, there existed a relationship between a woman of 27 years of age and a man named Ernest, 45 years old, a widower, and the father of seven children from a previous marriage. The marriage arrangements were quickly finalized, and on November 30th of the same year, the couple, having already engaged in civil union, exchanged vows of marriage before a priest delegated in the church of Saint Philip, commonly known as "du Roule," in the city of Paris. Subsequently, after the wedding, they traveled to Nice, and in the following days, they visited Lyons and Marseilles. However, they did not consummate the marriage, although they attempted to do so on three occasions, as they themselves reported. Thirteen days after the wedding, the couple returned to Paris, and the woman, Mary, abruptly left her husband, informing him in writing that she had become weary of his company and intended to move to other regions with her nephew, Monsieur Marchand, whom she had been passionately in love with for many years. Ernest, in order to avert the disgrace that threatened his reputation, petitioned the civil authorities for a judicial separation from his wife, which he readily obtained. Furthermore, he appealed to the highest authority and, on February 25th, 1893, received a decree from the Sacred Congregation, which instructed the Most Reverend Archbishop of Paris to conduct a process regarding the alleged lack of consummation of the marriage and the reasons for a dispensation, observing the proper procedures, and with the authority to delegate. This matter was diligently pursued by the aforementioned gentleman; and from the records transmitted to the Sacred Congregation as of December 22nd of the preceding year, it is evident that Ernest was considered by all who knew him to be truthful, honest, and of the highest integrity. One witness, Charles, the brother of the woman, expressed doubt regarding the veracity of the plaintiff's claims and suggested that the alleged lack of consummation was fabricated. Furthermore, Charles asserted that Mary, the defendant in the case, should be

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considered trustworthy, stating that while conjugal relations had indeed been attempted, they had never been consummated. "It does not pertain to us," concluded the delegated judge, "to judge this matter; nevertheless, we express our opinion with the utmost confidence: the opinion of this tribunal is that..."

[*Latin ed. p. 661*]

PARISIEN. He heard and questioned 661 witnesses, and this is the conclusion: "the marriage was not consummated." The advocate, defending this man who seeks a dispensation, argues that the testimonies of the spouses, if consistent, if proceeding from reputable, religious, and trustworthy individuals, and if finally supported by seven witnesses, are of such value that, according to chapter 5 of "Laudabilem," concerning impediments and defects, Sánchez De Matrimonio, book 7, dispensation 108, paragraph 6, and according to the Sacred Congregation itself in the case of "Parisien," June 26, 1855, "Burdigalen," February 26, 1825, and in others, they are sufficient to induce moral certainty regarding the non-consummation of the marriage and to obtain a dispensation, even without physical proof of virginity; furthermore, he notes that in such a case, numerous other supporting arguments exist, for example, the lover's confession, the wife's aversion towards her husband, and her flight, the public opinion that the marriage was not consummated, from which the non-consummation of the marriage is increasingly confirmed. Moreover, the advocate recalls that the confession of the non-consummation of the marriage, not only in court, but even beforehand, at a time when there was no suspicion, is presented as evidence. Indeed, Ernest had no suspicion of the woman's flight and had already made it clear that nothing had yet been done. After the flight became known, he repeated this to the parish priest, his confessor, the bishop, and others. The woman herself, while still legally married, made similar revelations to her lover. Shortly after her flight, she wrote to her husband: "I am at my wit's end, I can no longer bear it, I feel that I could never be your wife." The advocate states that there is no reason to suspect the sincerity of these confessions, since the confessions of the spouses are wonderfully consistent with each other. Both agree in time, in the number of attempts, and in the reason for the refusal. The husband asserts that he was coldly rejected by the woman, and the woman confirms this; the husband confesses that he had a troubled spirit when attempting marital acts, and the woman confirms this.

DEFENSE OF THE HUSBAND.

[*Latin ed. p. 662*]

662. The Parisian [woman] affirms; both declare that no penetration, not even an imperfect one, took place, and both finally declare that the mar-

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riage was not consummated solemnly, again and again. Furthermore, the constant and consistent testimony of these spouses, given both in court and previously, at a time when there was no suspicion, lends them the greatest authority, the advocate notes, if one considers that the witnesses and the records of the proceedings proclaim the veracity of both spouses, and at least the exceptional piety and honesty of one of them. Regarding the man, these things are confirmed by Canon Doublet, the parish priest of Saint Dionysius, the court of Arras, and Madame Storez. Finally, so that several things may be expressed in a single sentence, twelve other male witnesses unanimously extol the man's honesty and religion with the highest praise. After such testimonies, the advocate considers the affirmation of Mary's brother to be childish and ridiculous, who asserts that he does not believe in Ernest. Nor, indeed, is the testimony of the woman worse; for she too, although "she may have sinned more through weakness than malice," as a woman worthy of faith, is declared religious and renounces [her claim] by the court of Paris, by the Reverend Sister Martha, Mary's aunt, by Madame Marin, and by others. Furthermore, the advocate observes that the witnesses and the court that heard and questioned them not only swore to the spouses' credibility, but solemnly declared that they were morally certain that the marriage had not been consummated. "It does not pertain to us to judge this matter," says the court of Paris, "nevertheless... the opinion of this court, which has heard and questioned the witnesses, is that the marriage was not consummated." "I consider this non-consummation not only probable, but morally certain," says the parish priest Roger. And this is proclaimed unanimously by the priest Gelendais, Ernest's confessor, Sister Martin, Sister Martha, Madame Isaac, and all the others. Thus, the advocate concludes, the moral argument regarding the non-consummation is established with all the evidence. But this is not all, for in the case at hand, there are other supporting elements, among which adultery takes the leading place.

[*Latin ed. p. 663*]

PARISIAN. 663. It is established that the law prevents judges from directly questioning whether Mary was still chaste, or not; for this would imply questioning whether she had committed incestuous adultery, and no witness is obliged to reveal his own wickedness in court. However, the advocate argues, nothing remains for the court except to inquire indirectly whether the marriage had been consummated, and in this respect, the advocate believes that the judges have fully addressed the intended purpose. Amasius maintains that the fullest assurance to the woman, not merely affirming consummation, must be added; in other words, he declares that the marriage between Mary and Ernest had not been consummated. Surely, who does not see how precious an argument this confession is, coming from the lips of Amasius, who had possessed the woman's body? Who

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speaks from knowledge and fact? Another argument is drawn by the advocate from the woman's coldness towards her husband. Indeed, it is not surprising, he notes, if a man who had already passed his forty-fifth year, weary from travel, and with a troubled mind, approached a virgin for the first time, and was received with coldness and without any sign of affection, that he would fail in the first act. One would be more surprised if the opposite had occurred. After the first act proved unsuccessful, Ernest attempted a second and a third time. Besides the other feelings of the mind, besides the unwavering coldness of the woman, which would have robbed any man of his strength, a certain shame was added to the situation. Furthermore, why would the woman, on the fourth occasion, have refused, and why would Amasius and his aunt have manifested in writing their intention not to consummate the marriage, if the marriage had truly been consummated? Another argument for the lack of consummation is drawn by the advocate from the woman's flight. The woman would certainly not have fled from Amasius if she had been carrying the seeds of future offspring in her womb, especially considering the ardent love with which the man pursued the woman. "How can I ever forgive you for all the suffering I have caused you?" Mary wrote to Ernest. "Fate has pursued me at the very moment when you were..."

[*Latin ed. p. 664*]

664. PARISIEN. "From all your kindnesses." Finally, he draws an argument for consummation from public opinion. The voice of the people is the voice of God. No one has ever been deceived by all. The entire city is convinced that the marriage was not consummated. Therefore, the advocate concludes, no reason can be found in which the defendant has been lacking in greater probity, piety, sincerity, or integrity. It often happens that the Sacred Congregation, having considered only the probity of the advocate, has granted a dispensation. As in the case of the marriage in Tergestina, in December 1876. There was no examination of the woman's body, nor was there her sworn testimony; indeed, the woman was arguing for consummation, and there was even suspicion of abortion. Nevertheless, considering the probity of the most distinguished man, the Sacred Congregation consulted (1). Thus, having established the dispensation as a prerequisite, and having laid the foundation for the dispensation, the advocate then proceeds to present the reasons for the dispensation. And among the reasons, he first mentions the woman's flight and the certainty of adultery. But even the mere suspicion of adultery provides a reason for a dispensation, as taught by Coscius, *De separatione et aequalitate coniugum*, 461, and following, n. 269; and as the Sacred Congregation has often held; as can be seen in the case of the marriage in Albiganen, September 16, 1801. He also adduces another reason for the dispensation from the sentence of separation concerning the marriage and property,

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which the man has already requested and obtained from the civil tribunal. He states that another reason is derived from the insuperable aversion of the spouses. Concerning which, see Ursaya, *Disputationes*, 21, chapters 60, 61, 62, volume 1, part 2, and disputation 7, numbers 76, 77, volume 3, part 1; Corrad., *In praxi dispensat*, book 8, chapter 3, number 33; and to which, finally, there is no hope, even remotely, of a remedy. Therefore, all unanimously proclaim that reconciliation between them has now become impossible. Furthermore, a very serious argument for granting the dispensation is derived from the spiritual benefit to the petitioner of the dispensation; Perez, *De matrimonio*, in disputation 20, section 7, number 11; the Sacred Rota, in decision 86, section 7, after the second volume, Farinae; and the Sacred Congregation, in (1). You have this question in Volume X, page 376.

[*Latin ed. p. 665*]

PARISIAN. For numerous reasons, and citing the celebrated opinion of Cardinal Laneellotti, Prefect of the Sacred Congregation of the Council, from which practice the Sacred Congregation and the Supreme Pontiffs have not departed; as is taught by Lott, *De re benefic.*, book 1, question 11, number 3; and by the Sacred Rota, Decree 18, number 11, under the title *de probat, coram Falen* etc.

OBJECTIONS OF THE DEFENDER OF THE MARRIAGE BOND. The defender of the marriage bond, in the first place, observes that the spouses appear to agree wonderfully with each other when determining the number of attempts, but they vehemently contradict each other when attempting to demonstrate the futility of those attempts. Indeed, Ernest says: "Whether it was due to fatigue, or to the emotion that I experienced, and that one always experiences when approaching one's wife for the first time, or also because of the respect that is naturally inspired by a person whom one believes to be a virgin, there was no intercourse." Conversely, Mary portrays Ernest as a man who, with fury and lust, violated the ornaments of modesty and nature. She says: "I was deeply wounded... It is especially in his language during the most intimate moments of our relations that I affirm that if I had been the companion of a man more reserved in his demeanor, I would never have considered abandoning my duty." She does not see the reason why either Ernest or Mary would have wished to contradict the truth, if the marriage itself had remained unconsummated. For, in fact, both Ernest and Mary agreed that the matter was more likely to have been ruined by timidity than by the audacity of the husband. Therefore, he fears that in the present case, it is not a question of the unconsummation of the marriage, but of something else entirely, which is completely distinct from the unconsummation of marriage, and which necessarily presupposes the consummation of the marriage. He then presents the testimony of Charles, Mary's brother, the only witness

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who saw the spouses at a time when suspicion did not yet exist, and who spoke with them. "The witness, Charles, has no faith in the veracity of the man; he is convinced that the marriage has been consummated several times; he considers it impossible that this consummation has not taken place; the encounter in Marseille leaves him no doubt on this matter..."

[*Latin ed. p. 666*]

666. A PARISIEN. The witness adds that his sister assured him that his wife refused her marital rights to her husband only after 4 or 5 days, because she could no longer tolerate his excesses. The witness saw the couple (in Marseilles): he spent a few hours with them, and he was able to observe that there was some coolness between them. He made this observation to his sister, who replied that there was nothing of the sort. And in this testimony, nothing is lacking; for Charles recounts the facts clearly, providing irrefutable evidence of the cause, and he does not omit the circumstances, adding the place and time. Charles, when with the couple in Marseilles, said: "The witness found the couple in Marseilles, occupying only one room, with only one bed." He said that he saw them not at the beginning, but at the last days of their conjugal cohabitation, and he found the couple estranged: "The witness was able to observe that there was some coolness between them." He inquired about the cause of the estrangement, and he was assured by the couple that it was not a lack of consummation of the marriage: "The witness is convinced that the marriage has been consummated several times. The encounter in Marseilles leaves him with no doubt on this matter... his sister assured him that she refused her husband his marital rights only after 4 or 5 days, because she could no longer tolerate his excesses." Furthermore, the defender continues, at that time when Charles was least suspect, he learned from the couple not only of the consummation of the marriage, but also that an estrangement of affections followed: he learned, in other words, that a conjugal discord arose from knowledge of a fact, which can only be obtained through the consummation of the marriage. Indeed, fifteen days after Mary's departure, Charles wrote to Ernest about the cause of her flight: "As you know, I wonder what motive could have led Mary to behave in such a way. To speak to you frankly... I see only one explanation. It is the shame, too great to bear, of a previously guilty conduct, which caused her to suddenly abandon a home where she would have been so happy!..." Truly, the orator reasons, between the couple, Ernest...

[*Latin ed. p. 667*]

PARISIAN. It would be entirely untrue to say that "Mary had previously behaved wrongly," if Ernest had not been informed of this; nor could she have learned anything of this kind, at that time, far from her homeland, unless she had consummated the marriage. Charles, however, could

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only have learned of Mary's "previous bad conduct" through conversations with his wife in Marseilles; and even if he had learned of it from elsewhere, he would never have revealed it to Ernest. Indeed, when Charles says, "The shame was too great to bear," he clearly shows that Mary's fault had been revealed to Ernest, and that Ernest had not forgiven his wife for the injury she had inflicted upon him; and Mary, having lost all hope of forgiveness, chose to leave her husband rather than endure the intolerable pain of having a constantly hostile man before her eyes. Furthermore, the speaker says, the brother admits that Mary married Ernest with the firmest hope that her husband would forgive her fault. If you admit this, the defender of the sacrament continues, then everything is clear, if you allow yourself to be deceived for a little while, then everything is incomprehensible. But, the speaker continues, perhaps you are asking, did Mary marry Ernest because she hoped that conjugal embraces would give her the strength to resist the insane passions that were driving her towards her nephew? Therefore, she fled suddenly, because she was not bound by her husband's love, and her foolish passions for her nephew grew stronger and stronger. The matter can be reduced to a dilemma: either Mary was not bound by love for Ernest, or she was bound by love for Ernest, or she had experienced that she could not love him. If the former, why did she choose Ernest as a husband? If the latter, why was this impossibility of conjugal love discovered so late? Come now, with Mary's most eloquent testimony, she confessed after her flight that she could and did adhere to her husband, and that she had the strength to resist her nephew's insane passions. And, the defender of the marriage believes, there is nothing to prevent the letter that Mary gave to Ernest when she fled, in which...

[*Latin ed. p. 668*]

668. The Parisian, indeed, in the letter written by Maria, writes: "I am at my wit's end, I can no longer endure. After the eight days that we have just spent together, I feel that I could never be your wife. I have struggled for seven years; I wanted to struggle to the very end. Alas, I cannot! I am mad! Kill me, if you wish, if you seek to find me again. Put me in prison: everything will be more bearable to me than the thought of continuing to share my life with you." For indeed, nothing in the aforementioned letter is found that is discordant with what has been discussed thus far. For Maria, according to the speaker, describes her despair there, to which she was driven, having vainly hoped for forgiveness from Ernesto for eight days, and she indicates to him that it is impossible for her to be the wife of a man who is always offensive; that prison, and death, are more tolerable to her than the continued sharing of her life with an indignant man. This, he asserts, is the true meaning of the aforementioned letter. Furthermore, the defender notes, if it is held that Maria, during those eight days of conjugal cohabitation, was wrongly accused by Ernesto of having committed

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an act in the consummation of the marriage, and that she did not receive forgiveness, then it is not surprising that Maria, having lost all hope of forgiveness, desired to proceed to her brother, either to ask for his favor, or to flee with him; it is not surprising that Ernestus himself agreed to her going to her brother, since he did not grieve over the flight of an unfaithful wife. But it would be the act of a foolish man, who detests his wife for yielding to her inclinations, to accompany her to her brother. In addition, the speaker recalls, that the spouses did not only sleep together for thirteen days, but also experienced intercourse. But with these facts established, the consummation of the marriage seems miraculous to the speaker. On this matter, Coscius, *De Separ., torn. coniug.*, book 3, chapter 2, number 261 and following, writes: "If, indeed, the spouses have not only simply slept together, but also if the man has attempted the act of copulation, and the bride has offered herself to the act, even if unwillingly, and both affirm that nevertheless, because of mutual hatred and antipathy, they were unable to have intercourse, this is..."

[*Latin ed. p. 669*]

PARISIAN. It will be difficult to find someone who, without any bitterness, can immediately believe that they performed this miracle. Indeed, even the most holy men, who possess such an unyielding hatred for sin, as much as they are able, who love God from the depths of their hearts, doubted that this (miracle) could occur... Therefore, it is difficult to believe that two spouses, both powerful, who voluntarily chose the conjugal state in order to satisfy their lust, at that age when they are full of vigor, amidst the darkness of night... amidst the touch of any part of the body of the opposite sex, amidst embraces which cannot be avoided in a similar act, not once, nor even on one night alone, but repeatedly, while placed in this actual situation of union, could be transformed into two stone statues. It is difficult to believe that a young man and a maiden, alone with each other, naked with each other, solely through antipathy, could completely and consistently extinguish the burning desire of the conjugal act, unless it should also be said that fire cannot ignite straw, and a flame cannot ignite cotton... Therefore, in these circumstances, it is not so easy to accept the confession of a couple regarding the lack of consummation, nor the testimony of a midwife regarding the virginity of a woman, but it must be carefully investigated whether the spouses, in that act in which, as St. Augustine says, lust absorbs all reason, truly and actually did not consummate the marriage, or whether the midwives may have been deceived, or attempted to deceive with a lie. Therefore, no one fails to see what Coscius would answer in this present controversy, in which the testimony of a midwife in no way holds weight, nor can it hold weight; in which there is no suspicion of forced marriage or antipathy; in which the witnesses who testify against the marriage have heard nothing about the lack of consummation, either

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from the spouses or from others, at a time when it was not suspected. The orator briefly examines the arguments by which, contrary to what has been said, the marriage is considered consummated. And first, he says, it is unfair to accuse the spouses of breaking their sworn marital fidelity, a bond sealed with a solemn oath.

[*Latin ed. p. 670*]

670. The testimony, strengthened by evidence, is sufficient to establish the certainty of the non-consummation of marriage. For the confession of the spouses, being favorable to those who confess, proves nothing, as Sánchez teaches. However, the seventh seal [i.e., the testimony of a witness] always requires an oath, as the same Sánchez states in *De Matrimonio*, Book 8, chapter 108, paragraph 7: "so that, with greater diligence, the dissolution of marriage may be effected. This matter is of the utmost importance." Nevertheless, true proof can never be constituted by this in any case, and certainly not in the most serious cases concerning marriage. Nor does the honesty, religion, and integrity of the witnesses and the seventh seal influence the judge. For, even if, despite any piety on the part of the spouses and the seventh seal, the judge dissolves the marriage, if other arguments are lacking, he will inevitably bring the sanctity of the sacrament into grave disrepute. With these considerations in mind, the following question was proposed: Whether it is necessary to consult with the Most Holy [Father] regarding a dispensation from a marriage that is valid but not consummated in a certain case.

RESOLUTION. The Sacred Congregation of the Council, after discussing the matter on December 15, 1894, decided to respond: Affirmative.

FROM WHICH IT IS UNDERSTOOD:

I. Sworn testimonies of the spouses, consistent with each other, and proceeding from persons of worthy faith, supported by the testimony of the seventh seal, are sufficient to induce a moral conviction regarding the non-consummation of marriage, so that there is no need for a physical examination of virginity.

II. In the matter under consideration, a dispensation from a marriage that is only valid has been granted based on the testimonies of the spouses, and the seventh seal, as well as on some supporting arguments.

[*Latin ed. p. 671*]

671. MONTIVIDEO: A REQUEST FROM THE BISHOP CONCERNING THE PROPOSAL OF OBLIGATING PRIESTS TO ADOPT THE HOLZHAUSER RULE. VENERABLE HOLZHAUSER. January 25, 1895. Through summary petitions. A SUMMARY OF THE MATTER. The Bishop of Montevideo is greatly striving to introduce the Venerable Holzhauser

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Institute throughout all of Uruguay, whose purpose is to re-establish communal life among secular clergy. Therefore, he requests that he be permitted to obligate young men being ordained to such communal life, who, while lacking a patrimonial title, are promoted to the sacred orders with the title of parochial service. He also explained the benefits of this institution, the requirements for becoming a member, and the obligations undertaken by its members. A SYNOPTIC DISCUSSION. Several points concerning this Institute should be stated before addressing the question. The foundation of this Institute was laid by Bartholomew Holzhauser in the Diocese of Salzburg, with the intention of introducing communal life among priests, especially those dedicated to the care of souls in villages and towns. This new Institute was approved with great praise by Innocent XI in the year 1684, who, as Pope, issued many letters to the Princes and Bishops of Germany, urging them to protect and widely spread the Institute. This Venerable Rule for Priests is highly praised and encouraged by Pius IX and Leo XIII, happily reigning; the former through a Brief dated May 17, 1875, concerning the Superior Association of the Clergy of the Diocese of Namur in Belgium; the latter through a Brief dated May 31, 1880, addressed to the President of the "Apostolic Union" in France, which associations in the aforementioned letters serve the purpose of the Venerable Holzhauser Institute. The Rule of the Institute requires that priests live in communal life, at least three in each house.

[*Latin ed. p. 672*]

672 In MONTISVIDEI, the members are not bound by a profession of simple or solemn vows, but by an oath, which only the Roman Pontiff can dispense, by which they promise, until death, to remain within the Institute. They must obey the Superior of the Institute regarding internal discipline; regarding their own particular duties, they are subject to the Bishop; from whom they enjoy no exemption. Furthermore, each family possesses its own patrimony, consisting of the revenues received by each priest, through his office or sacerdotal title, of whatever kind; these revenues the confreres are obligated to contribute to the common fund. As for private civil possessions, each individual manages and disposes of them at his own discretion. Indeed, it is provided that relatives and close connections of the priest, in cases of necessity, may be assisted even by the revenues of the Institute, when other assets of the priest himself are insufficient. The parochial duties and other duties of each kind are performed respectively by the one who holds the title of that office, with the assistance of the other confreres, as the circumstances require. Furthermore, the Institute takes great care to ensure that all things suitable for the comfort and well-being of body and mind are available to infirm or elderly priests, or those otherwise prevented from performing their duties. From this, it is clear how justly and deservedly the Supreme Pontiffs have praised this Rule, and how they

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desire it to be spread everywhere. How much the common life contributes to correcting the bad habits of clerics and preserving the good, is known to no one. For this reason, Gregory VII, in order to reform the life of the clergy in that most corrupt age, could find no more effective means than to prescribe a common life for the clergy, as he decreed in chapter 9 of *De Vita et honestate clericorum*, Book III; prescribing, "We decree that, with diligent inspection of the revenues and expenses of the churches, you may establish a certain number of clerics, and that their goods may come into common, that they may eat in one house and sleep and rest under one roof. But if anyone should prove to be a contumacious person, it is permissible for you to suspend him from office and benefice, or even with a more severe punishment."

[*Latin ed. p. 673*]

673. In MONTISVIDEI, if it should be necessary, those who are subject to this regulation shall be compelled to observe it, notwithstanding any other designation.

The Supreme Pontiff, in giving these instructions, followed the practices of the older Church, from which priests and monks constituted a single order, a way of life also frequented by clerics, whose rules were notably promoted by St. Augustine and Eusebius of Vercelli in the West. It is truly worthy of special mention that Pope Gregory the Great ordered St. Augustine, the Apostle of England, to arrange the clergy in the Church in such a way that all, like monks, would live a common life, as recorded by Bede, Book I, chapter 27, in Thomassin's *Vetus et Nova Ecclesiae Disciplina*, Book III, chapter V, number 7, who, as an author in this Book III, presents many examples of this older discipline.

However, the Bishop's desire, which is certainly highly commendable, appears to encounter several obstacles. Firstly, the current Church law, in its common provisions, allows secular clergy to reside among their own, prohibiting only cohabitation with women suspected of incontinence, as prescribed in Title II of Book III, *De cohabitatione clericorum et mulierum*. Indeed, the famous canon of the First Council of Nicaea prohibits clergy from having women secretly introduced or suspected in their homes, as learned scholars explain. Furthermore, the common law does not require a common treasury for the clergy, as Title 25, *De Peculio clericorum*, of Book III prescribes how the Beneficiary and the Rector of the Church should administer ecclesiastical revenues, so that they should not spend them, nor convert them to their own use. Therefore, a Bishop who is not subject to common law does not seem to be able, contrary to this prescription, to compel the clergy to establish a system of common life.

In addition, from such a constitution, perhaps two more serious inconveniences could arise. Firstly, the clergy might abandon or reduce their

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clerical duties in order to avoid the burden of common life. Secondly, even if they obeyed the Bishop's commands, there would be great reason to fear that the institution would, in time, degenerate.

[*Latin ed. p. 674*]

674 The ruin of institutions is evident. For such institutions flourish and thrive if the students, with God's grace and great zeal, embrace the Rule; but they are corrupted and decline when not divine inspiration, but human arguments, attract people to this kind of life. Therefore, most wisely, the canons address the reform of the life of religious institutions by prescribing and forbidding that those who are not called by God, but by the law of flesh or blood, be excluded and prohibited. The cited decree of Gregory VII concerns the canons who were to live in common life within the cathedral church. Other historical documents, however, do not pertain to common law, but refer to attempts to introduce common life among the clergy, which, however, could not be achieved. Furthermore, the distinction made by the Bishop between clerics ordained with patrimonial rights and others, which seems to be a source of disorder in the diocese, obliges only those clerics ordained with patrimonial rights to a benefice to live in common life; thus, wealthier clerics lead a more comfortable life, with the envy of other clerics and the scandal of the faithful. Therefore, in this matter of such great importance, it seems prudent to proceed with caution, as emphasized by the Brevia of Pius IX and Leo XIII, whom God may long preserve. For they praise the spirit and intention of the Venerable Holzhauser Institute, which they desire to be widely spread. But at the same time, they more strongly encourage other similar associations of clerics, such as the "Apostolic Union," which has as its purpose to bind and associate priests together with a closer bond of pious fraternity, mutual exhortation, and mutual assistance, in order to fulfill the divine law, bearing one another's burdens and exhorting one another, according to the precepts of the Apostles. When the Bishop testifies that he has at least ten priests in his diocese already prepared to embrace the Holzhauser Institute, it seems prudent to urge him to lay the foundations of the Institute through pious priests, so that it may grow into a magnificent building if the examples of the founders shine brightly and wonderfully. For men must be led to perfection by ex-

[*Latin ed. p. 675*]

MONTISVIDEI. 675. Love and affection can draw and attract [people]; but they cannot be compelled by laws. This is especially true because the pious and prudent Bishop seems to lack nothing, who, with gentleness and strength, presents this way of life in such a fruitful, sweet, and convenient manner that he strongly invites everyone. Having stated these things, the question arose as to what should be answered regarding prayers. RESOLUTION. The Sacred Congregation, having considered the matter,

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decided on January 29, 1895, to respond: That clerics can be attracted to the proposed common life, but not urged. FROM THE PRECEDENTS OF THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS. March 15, 1895. SUMMARY OF THE AGREEMENT. In the city of Centumcellae, there exist two convents among others, one belonging to the Order of the Observant Franciscans, and the other to the Order of the Capuchins. Between these two convents, some disputes had arisen concerning processions, funeral associations, and other public functions. The Capuchins asserted that they had precedence, by reason of the seniority of their foundation, over the Observant Franciscans. On the other hand, the Observant Franciscans maintained that the Capuchins should always be considered to have precedence, by reason of the title of paternity, since their founder, Father Matthew of Basci, was of the Order of the Minor Observants. The Guardian of the Observant Franciscans, after making various and fruitless protests, in order to remove all discord between the two religious families, appealed to the local Bishop on June 14, 1892, to deign to settle this matter, using his authority.

[*Latin ed. p. 676*]

676. The matter of CENTUMCELLARUM, which was assigned to it by the Council of Trent, session 2, chapter 13, concerning the rights of Bishops, led to the Bishop summoning the Superiors of the Capuchin Order, who, declaring that the Ordinary was not competent to judge in such a matter, stated that the dispute should be resolved by the highest authority, namely the Holy Congregation, to which the parties accordingly submitted their arguments.

The General Chapter of the Regular Minor Order divided the discussion into two parts: in the first, it inquired into the rule or general legal principle according to which questions of precedence between the Observants and the Capuchins should be resolved; in the second, it discussed the particular case in question. Regarding the first point, it noted that all questions of precedence are governed by the principle that precedence is due to the more distinguished. However, since titles of greater or lesser distinction may vary, hence the various responses of the Roman Congregations; which, if the matter is carefully examined, do not contradict each other, but rather agree in establishing a general rule for resolving such questions. Indeed, Gregory XIII, in his Constitution *Exposcit Pastoralis* of July 25, 1583, in order to resolve controversies among Mendicant friars regarding precedence, established the following: ”Those who are placed in a position of precedence and of the right to precede, must precede in both public and private processions. And when it is not proven or established that there is a quasi-possession of such precedence, those who are older in the place of controversy must precede.” Therefore, according to the Bull, two titles must be kept in mind for resolving questions of precedence, distinguished in

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the following order: first, possession, or quasi-possession, and then greater antiquity of foundation in the place of controversy. However, the Minister General continues, this Constitution cannot be applied regarding the second title when the Capuchins are acting against the Observants; and Ricciotti, in *De Iure Regul.*, writes.

JURA MINOR. OBSERVANTIUM.

P. Minister.

[*Latin ed. p. 677*]

CENTUMCELLARUM 677, page 371: The Gregorian Constitution, which concerns itself with Orders that are distinct and separate from one another, such as the Conventual Orders, the Carmelites, etc., does not pertain to those Orders whose origin stems from one another, such as the Capuchin family, which originates from the Order of the Observants, like a son from a mother. Therefore, the Holy Roman Congregations, when defining precedence between the Capuchins and the Observants with respect to the original institution and the quality of filiation, have followed a different path and maintained: and that they declared that in the aforementioned case, nothing was taken away from that Pontifical Constitution. Hence, it seems to me that the Capuchins are excluded from the protection of that Constitution when they act against the Observants; because the Constitution itself does not concern the seniority of the foundation when there is a dispute between the Observants and the Capuchins, who are their filial descendants. This is confirmed by Cardinal de Luca in a note, referring to the Council of Trent, session 25, on the Rules, chapter 13. This doctrine, he says, was subsequently formally accepted by the Holy Roman Congregation in a decree dated November 26, 1678, which reads as follows: "Precedence is due to the Brothers of the Order of the Observants; because the Observants are prior in order of quality and Apostolic approval, and the Capuchins, although prior in foundation in the same place, are nevertheless filial to the Order of the Observants, and are much later in Apostolic approval; in which case, the Gregorian Bull concerning the seniority of a foundation in the same place does not apply." Therefore, it is not the seniority of the foundation that should be considered, but the priority of the institution and Apostolic approval. This decision is emphasized not only because it was formally approved by Innocent XI in his Brief *Nuper a Congregatione* of January 16, 1679, but also because other resolutions conforming to it were issued by the aforementioned Congregation, such as the decrees of February 27, 1847, and February 21, 1856. From this, he concludes that the decree of the Holy Roman Congregation is maintained as a rule for resolving questions of precedence between the Capuchins and the Observants. With this

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principle established, the Minister General proceeds to...

[*Latin ed. p. 678*]

678. The Capuchins encounter difficulties from the opposite side: and first, concerning the object which the Capuchins are called "sons in an unbroken line of St. Francis" in the Bull of Urban VIII, it is responded that this is true insofar as they profess the Franciscan Rule; but this does not exclude their origin and filiation from the Observants, since this is a historical fact. And it is clear that the Constitution is to be understood in this way from the subsequent decree of Ampurias, which in a certain way interprets it. Furthermore, it is not to be understood that the decree of Ampurias refers to a particular case, for this contradicts the very tenor of the decree; for those words are relative to the words immediately preceding, which enunciate the general principle concerning filiation, and in this case it is stated that the title of filiation and not the seniority of the foundation of the convent is to be considered. Then, the General Minister proceeds to explain the decisions of the Congregation of Rites which the Capuchins cite in opposition: he notes that the title of filiation prevails when it is opposed to the title of seniority of the foundation of the convent, according to the decree of Ampurias, but not when it is opposed to the title of possession, in which case the Gregorian Constitution is valid; hence it is not surprising that in Bari on September 25, 1688, and in another case in Potenza in the year 1695, the Capuchins were judged to have precedence over the Observants; the decision of Venafro in the year 1858 makes this clear: the Capuchins claimed precedence based on the title of possession and the seniority of the foundation; the Observants, relying on the decree of Ampurias, maintained that precedence should always be given to them, and they did not bother to refute the opposing title of possession, and thus the case failed. Hence, it is concluded that the decisions cited in opposition are not derogations from the decree of Ampurias, but rather a consistent application in the questions of precedence between the Capuchins and the Observants of the two titles of possession and filiation, which title of filiation, not only by the decree of Ampurias, but also by the Apostolic See, is recognized as proven, as is demonstrated by the Bull of Benedict XIII, *Pastoralis officii*, which establishes that the Observants have precedence over the Reformat, who descend from them.

[*Latin ed. p. 679*]

CENTUMCELLARUM 679, considering the antiquity of the Convents. This, according to the General Minister, is clear; however, in order to preclude all questions, he invokes a declaration of authority from the Holy See, which should be considered as a rule in the future.

Turning to the specific case of Centumcellarum, he maintains that the Capuchins of that place cannot in any way claim precedence over the Ob-

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servants, but rather the title of affiliation must be fully applied. Indeed, the Capuchins cannot invoke the title of possession, neither before nor after the foundation of the Convent of the Observants: not before, because at that time the Capuchins were alone, and they could not precede the Observants when the Observants did not yet exist; not after the constitution of the Convent of the Observants, because the Observants have always protested, and therefore the possession invoked is not peaceful.

Finally, the General Minister uses another argument, which is as follows. According to various decrees in the district of the City, which, according to Cardinal de Luca, *Relationes Romanæ Curiæ, Discursus* 37 and others, extends to 40,000, among the regulars, the order must be maintained that is observed in Rome: thus it is stated in *Mantuana, S. Congr. Episc., et Reg.* of March 30, 1593. To settle disputes among the regulars concerning precedence in processions, the location and order among the contending parties must be maintained as is customary and actually observed in the Holy City, which is the head and mistress of all. And it is the regulars whose Order was first approved by the Holy See who should precede, notwithstanding the Brief and declaration of Gregory XIII of July 25, 1583; this is confirmed by two decrees of the Holy Roman Church, as Lantusca states in *Theatrum Regularium*, page 470; the same is stated in the Synod of Albano Laziale in the year 1886, in article V concerning processions: "Religious families in public processions must maintain among themselves the order of precedence that is observed in our diocese, which is the same that is observed in the City (S. R. C., March 2, 1613), and they do not claim a place for themselves in accordance with the Constitutions of Gregory XIII, July 25, 1583, and Urban VIII, December 18, 1639." Adhering to these decrees, the Reverend Parochial of Albano Laziale in the year 1893 resolved the question of precedence that arose between the Capuchins of Albano Laziale and the Minor Observants of Palazzuolo.

[*Latin ed. p. 680*]

680. The statutes of the town of Centumcellarum, concerning Castelgandolfo, are opposed to the Capuchins, as is evident from a letter from the Very Reverend Father [Emi], dated December 1, 1893, to the Reverend General Procurator of the Capuchins. However, the General Minister of the State of Centumcellarum is located within the district of the City [of Rome], since it is not more than 30 miles distant from the City, and it should be noted that until the year 1825, it was incorporated into the diocese of Oporto. Therefore, among the regulars of this town, the Order that must be preserved, namely the Observants, should have precedence over the Capuchins.

RIGHTS OF THE CAPUCHINS. Otherwise, the Fathers of the Capuchin Order feel differently, and they vigorously oppose the claim of filiation: and first, they quote the words of the illustrious [Wading]: "The Obser-

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vants and the Capuchins are sons of the same parent, they are professors of the same rule; they are brothers, if not twins, at least siblings, hewn from the same rock, born from the same womb." Indeed, it cannot be understood how a brother can be born from a brother. Then, they recall that from the beginning, they have been entirely independent of the Observants, although, until the time of Paul V, they were subject to the Conventuals in the election of a General; but Paul V declared them to be entirely autonomous, truly Minor Friars, and also sons of St. Francis, and granted them the privilege of walking under their own cross, as stated in the Constitution of Gregory XIII. This was expressly confirmed by the Bull of Urban VIII, dated June 28, 1627, in which, considering the origin of the Capuchins to be to be reckoned from the time of the original and first institution of the Seraphic Rule, it was declared that they had been and were, from a true and never interrupted line, true and undoubted brothers of the Order of St. Francis. Therefore, since the alleged title of filiation lacks any basis in the presented rights, the Capuchins conclude that it is necessary to adhere entirely to the Gregorian Constitution, which was precisely issued to resolve controversies concerning precedence among the Mendicant Regulars.

Regarding the decree of Ampurias, the Capuchins state as follows: 1. The alleged filiation was not a constitutive part of the decree itself, but merely a motive; but it is well known that the reason for a law does not fall under the law, and that laws are based on will.

[*Latin ed. p. 681*]

CENTUMCELLARUM 681, delimited and not understood; but also, 2°. it cannot establish a reason for deciding, because its very non-existence is proven by history and by Pontifical decrees. Therefore, it is not surprising that the Capuchins submit, if afterwards the Holy Roman Church receded from the reasons alleged in the Ampuriensis decree, and resolved the questions according to the procedure of the Gregorian Bull, as is evident from the Barensi decree of 1688, and the Potentina decree of 1695, in which precedence was assigned to the Capuchins in opposition to the Observants, and especially from the Venafrana decree of August 14, 1858, in which, the Observants claiming precedence based on a supposed title of affiliation, the Capuchins prevailed, alleging possession and the prior founding of the Convent. In contrast, the Conversanen decree of February 27, 1847, states that the Observants were granted precedence over the Capuchins, not based on the repeatedly refuted title of affiliation, but because possession was established by legal proofs favorable to the Observants. Then, they are surprised as to how the Observants can allege in their favor the decision of the Bishop of Albano Laziale, and they reproach them as being poorly informed in this matter: for after this merely provisional decision, the Capuchins noticed that the synodal constitutions were to be applied only to the Regulars of that same place or territory, they invoked the decree

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of the Sacred Congregation of Bishops and Regulars of September 10, 1784, according to which the Bishop issued his decision: the decree reads as follows: "It pertains to the Capuchin and Conventual religious of Albano Laziale to have precedence over the Observants and Reformados Conventuum outside the territory of that city." Therefore, the Capuchins say, the Holy See rejected the paternity of the Observants, and the alleged title of affiliation is reduced to nothing. Having demonstrated that all questions of precedence among the Mendicant Regulars must be resolved exclusively according to the procedure of the Gregorian Constitution, the Capuchins proceed to the case of Centumcellarum and state that precedence belongs to them based on a twofold title, namely, the prior founding of the Convent, and possession. They themselves present their formal

[*Latin ed. p. 682*]

682. The Convent of Centumcellarum has existed since 1712, while the institution of the Convent of the Observants originates from the year 1863; therefore, the Convent of the Capuchins in the city of Centumcellarum is older. Furthermore, the Capuchins have participated in public processions from the founding of the Convent until the present time, and in the procession of the Observants mentioned above, they have held precedence; nor can this precedence be considered illegitimate and non-peaceful, as the Observants claim, because protests have arisen, and the Capuchins respond that, in order for these protests to have effect, they must be issued in legal forms, which has not occurred; therefore, their possession, as legitimate and peaceful, must be maintained. Having briefly stated these matters concerning both parties, regarding the Questions: I. Whether, according to the Gregorian Code, the precedence of the title of possession or quasi-possession is admissible, and whether, when possession or quasi-possession is not proven or established, the title of filiation, according to the Ampuriense Decree, or the title of prior founding of the Convent, as the Capuchin Fathers wish, should be admitted? II. Whether the Minor Observants, or the Capuchin Fathers, should precede in processions and other sacred functions in this case?

RESOLUTION. The Sacred Congregation of Bishops and Regulars, after deliberation on March 15, 1895, responded: To I. "Nothing to interpose." To II. Negatively to the first part; affirmatively to the second.

FROM WHICH WE MAY GATHER: I. In controversies of precedence among religious orders, the possession or quasi-possession of precedence must first be considered; for this is the superior and principal title, to which others are subordinate. II. However, when this is lacking, and the title of prior founding of the Convent and the title of filiation or prior approval by the Apostolic See are present simultaneously, as discussed above, which of these should prevail, it still remains a matter of controversy, and the Sacred

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Congregation has prudently judged that it is best not to interpose.

[*Latin ed. p. 683*]

CENTUMCELLARUM 683 III. From the decision concerning a particular case in Centumcellarum, nothing can be deduced for the resolution of a general question, since the reason for the decision of the Holy Congregation is not known; and even if it were known, it could not be of any consequence, since the reason for the law does not fall under the law; therefore, IV. As in the past, so also in the future, in resolving questions concerning the precedence of Regular Canons, the Constitution Gregorian, the decree of Ampurias, and other decisions of the Roman Congregations must be considered. THE SENTENCE OF SPOLETO, April 5, 1895. In order that the parish of Saint Peter the Apostle, outside the walls of the City of Spoleto, might not suffer damage in its spiritual administration, its Prior, the parish priest Anthony Campi, resided almost throughout the entire year in his native town of Morgnano, which is 4 or 5 kilometers from the aforementioned parish; the Archbishop of Spoleto appointed the priest Clitus Cardinali as a chaplain or vicar, with a promised salary, to be paid in due time. Cardinali remained in this assigned office for almost 4 years, namely from the year 1884 to the year 1888, with the consent of the parish priest; indeed, even in the year 1889, he was sent by the Archbishop to again substitute for the absent parish priest, with a similarly appropriate salary promised. When Prior Campi refused to pay the agreed-upon salaries, alleging that they were due to the Archbishop, and after all means to obtain his rights had been exhausted, the priest was forced to appeal to the authority of the Sacred Congregation for the Eastern Churches and the Religious. And indeed, on August 31, 1894, after having first made certain deductions, a judgment was rendered, by virtue of which Prior Campi was condemned to...

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 684*]

684. The Spoleto [religious house] was obligated to pay 250 florins to the actor, Cardinal [name not given], as a favor, due to the spiritual service rendered by him in the parish of St. Peter the Apostle during the time of the titular pastor's absence. The Prior of Campi appealed against this judgment, requesting that it be declared null and void, or, if that were not possible, that it be revoked in all its parts. Meanwhile, the priest, having made a new appeal to the Holy Congregation, requested that the opposing party be condemned to pay the entire sum demanded in the first judgment, namely 300 florins, due to the damage caused to him by the delay in the payment of his credit.

The synoptic argument of the Prior of Campi's advocate: The advocate

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argued for the nullity of the Archbishop's judgment, stating that the priest was appointed by the Cardinal to supplement the absence of the pastor, not by the pastor himself, but by the Archbishop; the Archbishop promised a salary, not the Prior of Campi, who was extraneous to the appointment and, indeed, unaware of it. Therefore, since the priest could not bring any action against the pastor, but could only claim the promised salary from the Archbishop, the judgment, which admits that the Cardinal could bring an action against the pastor, is spontaneously invalid, as it admits that such an action is null and void.

The advocate further argued that another defect of nullity lay in the fact that the judge who rendered the judgment was also a party in the dispute; the Archbishop, having acted in this judgment as President, and the judgment being issued in his name, which was, he argued, most unusual and absurd, since, if the Archbishop had appointed the priest as Cardinal to supplement the parish functions with a suitable salary, he had the greatest interest in condemning the Prior of Campi.

However, the advocate continued: "The judgment of the Archbishop is not only null, but also unjust, and therefore must be revoked." The Prior of Campi, due to his precarious and intermittent absences, had previously consulted with Ezzelinus Inghes, the pastor of the neighboring village of Rubbiano, leaving him as his substitute. How, therefore, the advocate exclaimed, could another have substituted for the PRIOR'S PASTORAL JURISDICTION?

[*Latin ed. p. 685*]

In Spoleto, the matter of the parish is unprecedented? Indeed, if the Archbishop had determined that a new vicar was expedient or necessary, the parish priest should have been informed; since he did not do so, it is just that the Archbishop bear the consequences of his error. Furthermore, the Procurator observes that the priest Inghes has already received a suitable compensation, as is evident from his receipts; but the Archbishop's decision condemns the Prior of Campi to pay the Cardinal 250 livres; therefore, the parish priest would be forced to bear a double expense, which, according to the Procurator, is unjust and unfair. THE RIGHTS OF THE PRIEST AGAINST THE CARDINAL. Otherwise, the priest Cardinal expresses a different opinion in his statement. Firstly, he points out that the Prior of Campi could not have denied that he, for four years and more, exercised the office of vice-parish priest in the parish of St. Peter; and he proves this, among other things, by the record of deaths of the parishioners from April of the year 1884 to March of 1888, in which he was present in the parish of St. Peter; with this premise, he argues that he was rightfully delegated by the Archbishop of Spoleto to provide for the absent parish priest of Campi; for, as the Council of Trent states in Session 6, chapter 2, regarding Reforms, the Bishop, as the delegate of the Holy See, must provide for the absent

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parish priest with a suitable vicar, assigning him a proper share of the fruits. Moreover, it is of no benefit for the Prior of Campi to claim that he had already appointed his vicar in the person of the priest Inghes, for he responds to the Cardinal that the appointment of a vicar must be approved by the Ordinary, as expressly stated by Barbosa in *De officio et potestate parochi*, part 1, chapter 8, number 52, where it is written: "In no way can a parish priest leave a vicar or substitute, even if suitable and admitted, for a long time in that diocese, without consulting the Bishop, for it is said in the Council of Trent: 'Let the vicar be approved by the Ordinary.'" But the vicar Inghes was appointed by the parish priest of Campi without consulting the Bishop. Then, the priest Cardinal refutes, one by one, the objections raised by the opposing party; and first, the argument regarding the lack of action.

[*Latin ed. p. 686*]

SPOLETO 686: Having observed that the Prior of Campi had already presented a request to the Sacred Congregation for the granting of compensation, when he offered 50 books for the service, which he himself rejected, because they were not a proportionate compensation; furthermore, Carpi states that the Archbishop's judgment regarding the nullity is invalid, because it was issued by a judge and a party, when it was discovered that the Archbishop had been delegated by the Sacred Congregation of Bishops and Regular Canons to resolve this controversy in the first instance of jurisdiction. Finally, the Cardinal rejected the argument of double compensation invoked by the Prior of Campi in the case where he would be forced to pay the requested sum of three hundred books, accusing him openly of lying, because from the written and sworn declaration of the priest Inghes, it results that he received nothing, by way of compensation, from the Prior of Campi, although ten books per month had been promised to him. Having thus considered both sides in the main points of the case, concerning the question of whether and how the judgment of the Archiepiscopal Court of Spoletum of August 31, 1894, should be confirmed or revoked, the RESOLUTION is as follows: The Sacred Congregation of Bishops and Regular Canons, after deliberation in the cause under the date of April 5, 1895, responded: The judgment must be confirmed, requiring the Prior and parish priest of Campi to pay the sum of three hundred books within one month, under penalty of suspension from divine office, which penalty will be incurred immediately, and furthermore. COLLE DI VAL D'ELSA CANONICAL CHAPTER. April 5, 1895. SUMMARY OF THE FACTS. The distinguished Collegiate Church of St. Geminianus in the diocese of Colle di Val d'Elsa has received various grants from the Roman Pontiffs.

[*Latin ed. p. 687*]

COLLEN. 687, adorned with privileges among which was the power of bestowing all benefices, both simple and complex, of the aforementioned

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town, to the exclusion of the Ordinary, and of issuing Bulls, as is mentioned in the Brief of Innocent XL of April 4, 1695, before the laws that undermined ecclesiastical property, consisted, besides the Archdeacon, of 12 canons and 24 chaplains. Through pernicious laws, this Chapter, like others in Italy, began gradually to diminish, so that in the year 1888, only 4 of the twelve titular canons remained. To remedy this evil and to somewhat restore the dignity of the cult and the sacred functions, the priest Canutus Canuti proposed to the Chapter to restore the endowment of one of the suppressed titular canons, on the condition that he himself would first be invested. The Chapter, with the consent of the Bishop, gladly accepted the offer; and after a chapter meeting convened on January 11, 1889, a solemn agreement was drawn up in writing on January 21 of the same year, which the Bishop himself signed. On the one hand, the priest Canuti obligated himself to deposit with the Chapter authorities, as soon as possible, bonds for 200 pounds, the beginning of a larger sum that a new canon would annually contribute to the Chapter's revenues, until the sum of 1000 pounds was reached, which was the established endowment for the restored canonry. On the other hand, the Chapter, with the consent of the Bishop, as mentioned above, declared that from that time forward it would receive and hold the priest Canuti as a titular canon. In execution of this agreement, the Chapter, as the inferior bestower, in virtue of the Apostolic privileges, on January 29 of the aforementioned year, conferred upon him the vacant canonry in the Chapter hall, which had been vacant since 1883 due to the death of the titular canon Ducei, and, as was customary, issued the Bulls on the same day, and the canon Canuti took possession of it. Having entered the Chapter, he first served as an assistant canon to the elderly canon Curato Cannicci, and then, in 1890, as one of the two canons with parochial rights.

[*Latin ed. p. 688*]

688. COLLEN. having been entrusted with the care of souls, he received a testimonial of his suitability for this purpose from the Ordinary. In the year 1892, upon the death of the Bishop, the current Bishop, Alexander, was appointed in his place. However, this Bishop maintained that the priest Canuti did not possess a canonry, arguing that the establishment of such a canonry was invalid, and he forbade Canuti from exercising any canonical rights. This caused great distress to the priest Canuti, who therefore appealed to the Sacred Congregation of Bishops and Regular Canons. This is the origin of the present matter, which was previously referred for resolution to the Metropolitan Tribunal, but that tribunal declined to hear the case, and it has now been returned to the aforementioned Sacred Congregation.

A SYNOPTIC SUMMARY OF THE ARGUMENTS:

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DEFENSE OF THE BISHOP. The Bishop first argues that the invalidity of Canuti's canonry is evident due to the lack of a canonical act of establishment. Furthermore, he argues that what is objected against him is irrelevant, because the matter was not about establishing a new canonry, but simply about restoring the endowment of a canonry that already existed and had only been suppressed civilly, due to the death of the canon, Ducei. For, the Bishop responded, it is true that such a canonry still exists before the Church, but it is equally true that no act or document exists to prove the restoration of the endowment of that canonry; nor can the agreement of January 21, 1889, be considered valid, because it does not concern the restoration of the endowment of the canonry held by Ducei, but only a promise to found a new canonry, which, it is true, was such that the priest Canuti did not hesitate to cede the patronage rights of this new canonry after his death to the Chapter of Geminiani. Therefore, the Bishop concludes, either the canonry of which the priest Canuti was invested is the canonry held by the deceased Ducei, and in that case, the investiture is invalid, because no action was taken in the agreement to restore the endowment of this canonry, or it is a new canonry instituted by Canuti, and...

[*Latin ed. p. 689*]

COLLEN. 689. Likewise, the endowment shall be null, because the canonical institution was not completed according to the prescriptions of the sacred canons. Therefore, in both cases, the election to the canonry of St. Canute is evidently null. But, the Bishop continues, if the aforementioned agreement were to be considered as an act of establishing or restoring the endowment of the canonry, it would not benefit the priest Canute; for this agreement was made under the condition that the priest Canute would pay 1000 pounds. However, he did not fulfill this condition, since he only paid 200 pounds; therefore, according to the Bishop, the priest Canute calls upon this agreement in vain; nor does it matter that the aforementioned priest has already deposited the remaining sum of 800 pounds with the Treasury, for the Bishop responds that, since the deposit is accompanied by a signed agreement or receipt, the aforementioned sum can always be recovered at the will of the depositor; therefore, this deposit does not provide any guarantee to the Chapter. Finally, the Bishop observes that if the Holy Congregation were to retain the priest Canute as a titular canon, he would be forced to tolerate in the town of St. Geminianus a parish priest unworthy of this office, and of the other honors and privileges with which the Collegiate Church is adorned.

DEFENSE OF PRIEST CANUTE. On the contrary, the patron denies the necessity of a formal decree of canonical erection; for the matter was not about the foundation of a new canonry, but simply about the restoration of the endowment of one of the canonries that had been civilly suppressed,

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namely, that which had been held by the canon Ducei; and this, he says, is clearly evident from the acts that followed in this matter: first, he explains the agreement of the 21st day of [month unspecified] 1889. The purpose of this agreement was to promote the decorum of the cult and the sacred functions by increasing the number of canons; but in order to achieve this, it was not necessary to found new canonries, since the Collegiate Church was already sufficiently provided with canonries, whose revenues had been taken away by the Government through suppression; therefore, it was sufficient to restore these revenues; therefore, the patron concludes, even if the Acts, Volume XXVII, page C C C XXIII, 44...

[*Latin ed. p. 690*]

690. The agreement, it was ambiguous; therefore, it should be presumed that this happened, because no one is presumed to do useless things. But, the advocate continues, the words of the agreement are clear; for it is stated there that the priest, Canuti, had decreed to restore the dowry with his own money for one of the suppressed canonries: now, truly, to restore the dowry of a benefice is not to found a new benefice, but to re-establish the dowry of one that already exists and is founded. Examining the charter of collation, he says that it clearly appears from it to whom a new dowry was established for one of the twelve suppressed canonries, and he rejects the difficulty raised by the Bishop regarding the cession, made by the priest, Canuti, with the favor of the Chapter, of the patronage, noting that, according to chapter 9, session 25 of the Council of Trent, concerning reforms, patronage is acquired not only by foundation, but also by the endowment of a benefice. Therefore, he concludes, since the priest, Canuti, did not found a new benefice, but only restored the dowry, and specifically to a canonry held by Ducei, the defect in the decree of canonical erection, urged by the Bishop, does not at all prevent this; moreover, this restoration of the dowry was made not only with the consent and acceptance of the Chapter, but also with the consent and acceptance of the Ordinary: and therefore, it was legitimate. After these things, the advocate proceeds to refute the difficulty raised by the Bishop regarding the payment of 800 florins. He says that, according to articles 1, 3, and 5 of the aforementioned agreement, this payment should have taken place through the retention of the annual canonical dues from the new canon, Canuti, by the Proposit of the collegiate church, until the concurrent sum of 1000 florins was reached, established as the dowry for the canonry: this is the law of the agreement; therefore, there was no obligation to immediately pay this sum. Nevertheless, the priest, Canuti, in order to show himself prompt in collecting the funds for the dowry of the canonry, deposited the sum of 800 florins in the Chapter's treasury, to be given to them whenever they wished. Furthermore, when the priest, Canuti, was accused by the Bishop of not having paid this sum, he offered himself, with two witnesses present, to pay it to the Proposit,

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but he refused.

[*Latin ed. p. 691*]

COLLEN. 691 "Concerning the life [of Canuti], the patron argues that the priest Canuti faithfully fulfilled his promise; and if payment did not take place, certainly this cannot be attributed to his fault. Furthermore, concerning the alleged unworthiness of the priest Canuti to exercise the parochial office, omitting that this accusation of the Bishop is too vague and indeterminate, he responds that the presumption is destroyed by the very manner of acting of the Bishop of Collensis, who urgently requested the priest Canuti to accept the parish of Saint Bartholomew of Tonni; then he observes that suitability for the parish is not to be confused with the question of the validity of the election in the canonry: for the former is reserved for the judgment of the Bishop, the latter depends on the Chapter; otherwise, the defender maintains that he does not contend that the priest Canuti is declared suitable for the parochial office, but only that the true and effective canonry of the Collegiate Church of Saint Gemini is maintained. Having stated these things on both sides, concerning the question: Whether the priest Canuti is to be considered a titular canon with effective rights in the Collegiate Church of Saint Gemini in this case? RESOLUTION. The Most Holy Congregation of Bishops and Regular Canons, after discussion on April 5, 1895, decided to respond: Affirmative. The term of one month is prefixed to the Reverend Canuti to deposit the sum of one thousand livres in the diocesan treasury; and it is to be written to the Bishop, in order... From THESE, WE GATHER: I. To found a new benefice is one thing, to restore the endowment of a benefice already existing is another: for the former, a formal decree of canonical erection is required, namely that the Bishop or the Pope, accepting the endowment, designates the sacred office and attaches it; for the latter, it suffices that there has been the simple consent of the Bishop. II. From the fact that someone has acquired the right of patronage in a benefice, it cannot be rightly inferred that he also founded it, because, according to chapter 9, session 25 of the Council of Trent, from the simple endowment of a benefice or the restoration of an endowment, the right of patronage does not arise.

[*Latin ed. p. 692*]

COLLENSI. 692. How one may acquire a benefice. Therefore, the Holy Congregation, not attending to the defect in the canonical erection presented by the Bishop of Collensi, decided that the priest Canuti was indeed the true titular.

EXTRACT FROM THE 8TH SESSION OF THE CONGREGATION OF INDULGENCES OF THE CARMELITE ORDER. REGARDING THE MATERIAL FROM WHICH SCAPULARS SHOULD BE MADE.

Brother Bernardine, General Prefect of the Carmelite Order, humbly

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presents to this Holy Congregation of Indulgences and Sacred Relics, that a custom has arisen of making and imposing scapulars upon the Christian faithful from felted wool (feutre, feltro), and not woven (tissée, tessuta). Therefore, a doubt has arisen, which is presented to this Holy Congregation, namely: Can scapulars made not from woven wool, but felted, be given to the Christian faithful, without them losing the Indulgences granted to those wearing scapulars?

Furthermore, the Holy Congregation, having heard the opinion of one of the Consultors, decided that the proposed doubt should be answered with: No, according to the Decree of this Congregation, dated August 18, 1868, concerning question 2, which reads as follows: "Whether the word 'panno, panniculus,' commonly used by the authors, should be understood in the strict sense, that is, of only woven wool (tessuto), or whether it can also be understood of woven wool with a looped structure (lavoro di maglia, tricotage), and of any wool work embroidered (ricamo, broderie), provided that the prescribed color is always used? — Answer: Affirmative to part 1; negative to part 2."

Given in Rome, from the Secretariat of the aforementioned Holy Congregation, on the 6th of May, 1895.

FR. IGNATIUS CARDINAL PERSICO, PREFECT.

ARCHBISHOP OF NICOPOLIS.

SECRETARY.

[*Latin ed. p. 693*]

693 From the DECREE of the HOLY CONGREGATION OF RITES concerning the Beatification and Canonization of the Venerable Servant of God, Theophilus of Curte, Priest, of the Order of the Friars Minor of the Observance of Saint Francis. REGARDING THE DOUBT: Concerning what miracles are established in the case, and to what effect, for the matter under consideration? Indeed, the Venerable Theophilus shone forth with virtues cultivated to a remarkable degree and with the preeminence of extraordinary charisms, so that, even by his mere presence, many people were moved to piety. For, having followed the Apostle in a singular manner, he sought to please his neighbor for the good of their edification, and he constantly advanced the fruits of his justice; likewise, the inhabitants of Corsica, where Curte was born, the family of the Friars Minor to whom he gave his name from his youth, and the people of Etruria, whom, drawn by charity, he served with unwavering zeal, all regarded and loved him with great veneration. Indeed, the fame of Theophilus spread even to other peoples, and while he was still alive, it was customary for all to call him, in

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word and deed, a friend of God and an image of Christ. Nor were there lacking men of conspicuous dignity who frequently compared him to Blessed Thomas of Cori, with whom he had not only been united in society and was similar in character, but who had also been a companion in labors and an equal in fortitude. For, having converted wicked men to a better way of life, having drawn religious souls closer to the perfection of the Christian life, and having, with an unconquerable spirit, scorned countless afflictions of every kind, he possessed this one thing: to be a help and comfort to the Church, which was then sorely afflicted. And this occurred to such an extent that it was said that even heavenly prodigies testified to the sanctity of the Servant of God. This opinion, indeed, continued to grow and be strengthened, and his own death, which, with a most peaceful exit, the Venerable Theophilus attained in the town of Phiceclo, on the fourteenth day before the Kalends of June, in the year one thousand seven hundred and forty. He had indeed inspired great confidence.

[*Latin ed. p. 694*]

694 From the Sacred Congregation of Rites, nothing should be considered impossible from God, who had, by numerous miracles, confirmed the hope of the people, justly conceived in the supplications of his servants, especially in connection with the precious relics of the same. This was done so that, in order to honor a most worthy man with the honors of the Blessed, and to examine the monuments of his exceptionally virtuous life in every way, as was fitting, and to bring about a favorable outcome for the cause before the Sacred Congregation of Rites, Pope Pius VII, moved by these considerations, and with the applause of all Catholics, returned to the Roman See after a five-year exile, and solemnly declared, on the feast of the Nativity of the Blessed Virgin Mary, on the 16th of September, in the year 1817, that he would beatify Theophilus, whose heroic virtues had reached the highest degree. In order, however, that the truth might be thoroughly asserted and the miracles, which the people, invoking his help and intercession with God, had attributed to Theophilus, might be vindicated, investigations were begun according to the norms of law, concerning two specific miracles, with the proper procedures duly followed. These investigations took place in the preliminary meetings held before the 16th of May, in the year 1819, in the offices of the Most Reverend Aloysius Serafini, the Relator of the Cause; in two preparatory meetings held at the Apostolic Palace in the Vatican, on the 10th of May of the following year, 1820; and subsequently, with the matter being more thoroughly examined, in the year 1821, on the 18th of February; and finally, in the general meeting held before the Most Holy Pope Leo XIII in the Vatican, on the same year, on the 29th of March. In this final meeting, the Most Reverend Cardinal Vincent Vannutelli, the Relator of the Cause, having taken the place of Cardinal Serafini, who had passed away, proposed the following question

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for discussion: "Of what miracles does the case consist, and which of them are sufficient to establish the effect for which we are considering this matter?" And all the Most Reverend Cardinals and other Consultors present gave their votes. The Most Blessed Pope Leo XIII, although he expressed his own judgment with firmness, indicated that, nevertheless, considering the importance of the matter, he would invoke the help of divine wisdom from the Father of Lights, and he considered it prudent to postpone his decision. But on this most auspicious day, which coincides with the solemn anniversary of the Ascension of Christ into Heaven, all...

[*Latin ed. p. 695*]

FROM the Sacred Congregation of Rites, 695, having considered for a longer time than it deemed fitting, that the supreme testimony might be added to the miracles, in order to advance the cause of the Venerable Theophilus, who had shown a singular love for the triumphs of Christ; so that, not without the divine providence, in these our times when the Faith is most sorely afflicted, a new light of miracles might be displayed, so that the minds of men might more vigorously ascend to heavenly things. Therefore, having performed the sacred rite most religiously, it entered this Vatican hall, and seated upon the Pontifical throne, it ordered that the Most Reverend Cardinals Caietan Aloisi-Masella, Prefect of the Sacred Congregation, and Vincent Vannutelli, Promoter of the Cause, and also the Reverend Father Augustine Caprara, Promoter of the Faith, and myself, the undersigned Secretary, should be summoned, and in their presence, it decreed: That two miracles are established; namely, the first: the instantaneous and perfect healing of the girl, Iosepha Aleati, from a long-standing and grievous pain in the loins, afflicted with very serious symptoms; and the second: the instantaneous and perfect healing of Francis Tognetti from an old paralysis, arising from a sclerotic myelitis. Furthermore, it ordered that this decree be promulgated and recorded in the acts of the Sacred Congregation, on the tenth day before the Kalends of June, in the year one thousand eight hundred and ninety-five.

C. CARD. ALOISI - MASELLA, Prefect of the Sacred Congregation.

L. * S. ALOISIUS TRIPEPI, & R. C. Secretary.

MACAO. Various doubts concerning the Mass for the dead, concerning the feast of the Most Holy Heart, and other matters.

The Most Reverend Lord, Joachimus de Medeiros, Bishop of Macao, of the Lusitanian jurisdiction in China, most desirous that the sacred rites in his Diocese be observed by all, according to the ecclesiastical prescriptions, humbly requested a solution from the Sacred Congregation of Rites, regarding the following doubts:

I. Whether a priest who celebrates the conventual Mass on the feast of All Saints, on the 2nd of November, can, on the one hand, make use of the

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concession granted by Pope Benedict XIV to the Kingdom of Lusitania, to say three Masses for the dead, and, on the other hand, celebrate two Masses of Requiem?

II. Whether, if the first day of the week, Friday, the 6th of November, occurs, which is the day on which the commemoration of All Faithful Departed is celebrated, it is permissible to...

[*Latin ed. p. 696*]

696 FROM the Sacred Rites: Whether the votive Mass of the Most Holy Heart of Jesus may be celebrated according to the decree of the Sacred Congregation of Rites of June 28, 1889? III. And concerning the affirmative answer to II, whether on that same day, among the Portuguese, it is permissible for the celebrant to offer the aforementioned votive Mass, and also two other Masses for the Dead? IV. Whether, on a Thursday in Holy Week, during the Pontifical Mass, the assisting Priest and Deacon, the Canon holding the umbrella, and the Subdeacon, if they are Priests, must put on the stole before receiving Communion from the hand of the Bishop; or rather, are they to approach the Sacred Synaxis only with the same vestments that they were wearing from the beginning of the Mass? V. Whether the feast of the Most Holy Heart of Jesus, which is listed among the secondary feasts of the first class in the Universal Calendar by the decree of the Sacred Congregation of Rites of August 22, 1893, and which has long been observed among the Portuguese as a primary feast, under precept in both forums, with the addition of the fast of the eve, must now be celebrated according to the praised decree as a secondary feast; or rather, whether it is to remain as a primary feast in the Portuguese territory? VI. Whether the custom, by which a simple Priest or Canon celebrating a solemn Mass, blesses the preacher who speaks after the Gospel, may be maintained? VII. Whether a Priest who reads three Masses consecutively on the feast of the Nativity of the Lord, or on the second of November in Venette, must recite three times the "Ave Maria," "Salve Regina," and the other prayers ordered by the Most Holy Pope Leo XIII to be recited after a private Mass, after each Mass; or rather, whether he must recite them only once after the third Mass? VIII. Whether, in the choir, when reciting the Psalm "Venite, exultemus," which is to be recited during the third Nocturn of the feast of the Epiphany of the Lord, all, including the Canons, are to stand with bowed heads, while the aforementioned Psalm with its antiphon is recited? IX. Whether, if the feast of the Annunciation of the Blessed Virgin Mary falls on a Friday, either on the Friday of Holy Week or on Holy Saturday, in places where this feast is observed under precept of hearing Mass and abstaining from servile works, it must be transferred to the second day after Sunday in Albis, with the precept also for the people? X. Whether the custom may be maintained on a Friday, either on the Friday of Holy Week or on Holy Saturday, in the adoration of the Cross, that he who has completed the adoration, does

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not...

[*Latin ed. p. 697*]

FROM SACRED RITUALS 697: Should the act of kneeling before the Cross give way to a single knee bend, but should three knee bends be performed with both knees? Furthermore, the Sacred Congregation of Rites, after a careful consultation with another expert from the Masters of Ceremonies of the Apostolic See, and with reference to the undersigned Secretary of the Sacred Congregation of Rites, having carefully considered all matters, decided to answer the proposed questions as follows: To I: Affirmative. To II: Negative, according to the rubrics. To III: Provision is made in the foregoing. To IV: Negative regarding the first part, Affirmative regarding the second. To V: With special attention to a particular privilege, the Feast of the Most Sacred Heart of Jesus in the Kingdom of Lusitania is, by accident, a primary feast. To VI: Affirmative, according to other decrees. To VII: Negative, and the prescribed prayers should be recited at the end of the last Mass. To VIII: The custom should be observed. To IX: A general decree was issued on February 12, 1690. To X: After the adoration and kissing of the Holy Cross, the celebrant, ministers, clergy, and people should rise, kneel on one knee, and return to their proper places. And thus it was decreed and ordered to be observed. May 10, 1895. CAL CARD. ALOISIUS - MASELLAS. Prefect. L. * S. ALOISIUS TRIPEPI, Secretary. URGELL. Questions regarding Masses for the dead, and the Feast of Saint Michael the Archangel. The Master of Ceremonies of the Cathedral Church of Urgell, by order of his Most Reverend Bishop, humbly proposed the following questions to the Sacred Congregation of Rites: I. Since in the Cathedral of Urgell the custom of reciting the Office for the Dead on the days designated by the rubrics does not exist, is there an obligation to celebrate a Mass for the dead there, according to the rubrics of the Roman Missal, Title V, number 1? II. On the first of October, the Feast of Saint Michael the Archangel is celebrated in Spain according to the rite of the second class.

[*Latin ed. p. 698*]

698 From various liturgical codes, the hymn "Tibi Christe" is prescribed for Vespers and Matins, taken from the feast of Saint Raphael the Archangel, with the second stanza modified in this manner: "We praise you, adoring — All you princes of the heavens — But especially the Guardian — Of this kingdom and people — Who, at your command, — Protects us from all evils"; in other codes, the hymn "Custodes hominum" is noted. Furthermore, in some codes, the Second Vespers of the Feast of the Angels of the Kingdom are assigned, without mentioning the following feast, namely the feasts of the Most Holy Angels Custodes; however, in the Ratisbon code and in others, the mention of the following feast is included. Therefore, in order to resolve all differences, the following is inquired: 1.

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Should the hymn "Tibi Christe" be recited at Vespers and Matins, with the second stanza modified as above? 2. Should the Commemoration of the Most Holy Angels Custodes be made at the Second Vespers, as in this case? Furthermore, the Sacred Congregation of Rites, after a careful vote of one of the Masters of the Apostolic Ceremonies, and with the reference of the undersigned Secretary, having carefully considered all matters, decided to respond as follows: To the first question: Affirmative. To the second question: Regarding the first part: The hymn "Tibi Christe" should be recited, with the second stanza modified as follows: "We praise you, adoring — All you soldiers of the heavens — But especially the Guardian — Of this kingdom and people — Who, at your command, — Protects us from all evils." Regarding the second part: The Commemoration of the Most Holy Angels Custodes should be made at the Second Vespers. And thus it was decided and it is commanded to be observed. Notwithstanding any contrary opinions. On May 10, 1895. CAJETANUS CARDINAL ALOISI - MASELLA, Sacred Congregation of Rites, Prefect. L. © S. ALOISIUS TRIPEPI, Sacred Congregation of Rites, Secretary.

[*Latin ed. p. 699*]

699 APPENDIX VI. EXHIBENS ACTA AUT SEDIS QUAE APOST. ; TEMPESTIVO QUAE AUT IAMDIU LATUERUNT EXARATA SUNT EPHEMERIDUM MODERATOREM.

Instruction from the Sacred Congregation of the Holy Office, July 2, 1878. - (To the Ordinaries of the Empire of Brazil). Concerning the conduct of the clergy with regard to Masons. The pestilence of Masonry, which inflicts such damage on Religion in these regions, will be more effectively suppressed the more diligently the clergy observe the rule of Catholic doctrine concerning the manner of acting with Masons, especially with regard to the Sacraments and other spiritual goods, from which they must be entirely excluded, until they renounce the announcements of that impious sect. However, when the Holy See becomes aware that the practice of these pastors deviates greatly from this matter, the Sacred Congregation, with the approval of the Most Holy Father, has deemed it necessary to recall the following, which must be carefully observed by all. Therefore, let us speak first of the Sacrament of Matrimony. It cannot be tolerated that, as is reported in some dioceses, marriages contracted by Masons are celebrated with all the solemnity of the Catholic rite. Rather, if anyone requests to be joined in marriage who is known to be attached to the Masonic sect, the parish priest is bound to use all his efforts to persuade him to renounce that sect; and if he refuses, diligent care must be taken to deter the bride and her parents from such a marriage by suitable exhortations. When, however, the parish priest cannot in any way prevent such a marriage, and prudently fears that a denial of the marriage would result in a grave scandal or harm, the matter must be referred to the Ordinary, who, as he is now granted

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the appropriate power, after considering all the circumstances of the case, may permit the parish priest to passively assist at the marriage, that is, without blessing, and without any other ecclesiastical rite, as an authorized witness, provided that due care is taken for the Catholic education of all the children, and other similar conditions are met. This power, to the extent that the judgment of the Ordinary deems it necessary, may be delegated secretly to the parish priests. Whenever it is a question of marriage between one party who is Catholic and the other who has defected from the faith to such an extent as to have attached himself to some false religion or heretical sect, the usual and necessary dispensation must be granted, with the usual and well-known prescriptions and clauses.

[*Latin ed. p. 700*]

Furthermore, the Ordinary, acting in the name of the Holy See, should instruct confessors to seriously warn their penitents not to give their names to the society of the Free Masons or other similar clandestine associations, nor to presume to attend or support their gatherings, and to deny sacramental absolution to those who are persistent in this. In order that those who are truly repentant may be absolved from the excommunication incurred, His Holiness grants the necessary and appropriate faculties to the Ordinaries for a period of ten years. Moreover, confessors should know that sacramental absolution should not be given to those who are members of the society of Free Masons, even if they repent of having taken the oath, unless they first absolutely and positively abandon the aforementioned condemned society forever, or at least seriously promise to do so as soon as possible. Furthermore, it is entirely forbidden for Masons to undertake the office of godfather in the Sacrament of Baptism, or of sponsor in Confirmation. For, insofar as they adhere to a sect condemned by the Church, they are in no way suitable for the Christian upbringing of spiritual children, if it should be necessary. Finally, with regard to the burial and funeral rites of Masons, the statutes of the Church must be strictly observed. Specifically, ecclesiastical burial cannot be granted to notorious Masons, unless they have made due retraction, and have been reconciled to God and the Church through absolution. If, however, they are prevented by death from making a proper retraction, but have nevertheless given signs of repentance and devotion before their death, then ecclesiastical burial may be granted, but without the ecclesiastical pomp and solemnities of the funeral. Furthermore, ecclesiastical burial should not be granted to those who, even after receiving the Sacraments, have themselves requested to be buried with the signs of the Masonic sect. Unless, that is, they have subsequently retracted this wish. If, however, through the perversity of others, emblems of the Masonic sect have been affixed to the coffin against the will of the deceased, upon being informed of their presence, they must be immediately removed, and entirely before the association of the body. From this, it is clear that it

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is absolutely not permissible, as has been reported to occur in some places, for bodies to be carried to the grave in the manner of the Masons, in the presence of a gathering and of clergy. Regarding those cases in which ecclesiastical burial is to be denied, if there are serious disturbances to be feared from such a burial, the Ordinary, in order to proceed more safely in this matter of such importance, should follow the response of the Sacred Penitentiary; namely, that whenever ecclesiastical burial and funeral rites are required for a deceased person who is a notorious excommunicate, he should be plainly deprived of them, according to the sacred canons and regulations. The Sacred Penitentiary, in its decree of December 1, 1860, prescribed that this should be observed in the following manner: "It is to be ensured that everything is done in accordance with..."

[*Latin ed. p. 701*]

APPENDIX VI. 701 "Let the canons be observed: but in order that, without the danger of disturbance and scandal, "it may not be possible" for the parish priest, neither by himself, nor through other priests, in any way to attend funerals or burials." Finally, since the Masonic society is certainly to be considered among those societies condemned by the Apostolic Constitutions, it is in no way permissible for Masons, in an official capacity, that is, those delegated by the sect, to participate in the Holy Sacrifice of the Mass or in other ecclesiastical functions. It must also be forbidden for the clergy to comply with the request or desire of Masons for the celebration of Masses or other ecclesiastical functions, whether such requests or demands are made by Masons, or whether they are announced in invitations or in public newspapers. Sacred Congregation of the Holy Office, March 7, 1883. — Letter of His Holiness. Concerning the admission to the Sacraments of those who had given their names to secret societies, etc. Can those be admitted to the participation in the Sacraments who, solely in order to avoid temporal harm, are enrolled in secret societies, intending to remain Catholics? R. According to what has been explained, those Catholics, of whom we are speaking, can be admitted to the Sacraments, after obtaining absolution from excommunication, as may be necessary, for which the Bishop is given the appropriate faculties, provided that: 1. they have completely separated themselves in reality from the aforementioned societies; — 2. they promise never again to participate in any activity of those societies, either in secret or in public, and especially never again to pay the required contribution; — 3. the scandal is removed in the best way possible; — 4. they are disposed to withdraw their names, if and when they can do so without serious harm. — His Holiness approved. Sacred Congregation of the Holy Office, July 26, 1848. — Apostolic Vicariate of Malacca. Concerning the translation of the New Testament. Among the various books which are widely disseminated in these regions in the Burmese or Javanese language by Anabaptists, and which contain some errors, more or less serious, there are translations of

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the New Testament, of which some passages are corrupted, while others, although orthodox, have been translated not according to the standard edition; others, again, because of the lack of words, or ignorance of accurate language, present ambiguity, or are at least not adequately translated according to the true meaning. These books and trans-

[*Latin ed. p. 702*]

702 APPENDIX VI. These books could with difficulty be removed from the hands of neophytes, especially those converted from Anabaptism, since they are accustomed to reading them, and Catholic missionaries are not yet able to provide them with better reading material. Therefore, the following questions are raised: 1. Can the books in question be left in the hands of the converted, under the pretext that the errors contained in them are not understood, or at least not believed? 2. Can missionaries be absolved, who, under the same pretext or other similar pretexts, refuse to remove the aforementioned books from the hands of Christians? 3. At least, after the errors have been discovered and corrected or suppressed, can the aforementioned books be left with the faithful until accurate and properly written or translated books are available? Answer: To each of these questions, the answer is negative. It is necessary for evangelical workers to ensure that the books in question, mentioned in the aforementioned page, are burned, and that every effort should be made to produce and publish a Catholic and corrected version of the Bible, after prior examination and approval by the Holy Congregation of the Propagation of the Faith. Letter from the Holy Congregation of the Index, August 24, 1864. Among the many calamities that afflict the Church of God in these sorrowful times, it is certainly necessary to mention the abundance of wicked books, which almost inundates the entire world, through which, by nefarious and depraved men, the divine Christian religion, which should be held in honor by all, is despised, the morals of especially young people are deeply undermined, and the rights and order of social customs are also overturned and disturbed in every way. And, as was their custom in the past, they strive to achieve this not only through books of great scientific elaboration, but also through small, inexpensive pamphlets, and through public and specially prepared periodicals, so that they may not only insinuate this poison to the uneducated and learned, but also corrupt the faith and simplicity of the most unrefined and lowest people. Those legitimate pastors who watch over the flock of Christ, in order to avert this ruin from the people entrusted to them, bring any books of this kind to the Sacred Congregation of the Index, striving zealously to deter the faithful from reading such books, according to the judgment and condemnation of the Roman See. And the Holy Congregation has not found it difficult, nor does it find it difficult, to

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devote daily effort and study to...

[*Latin ed. p. 703*]

APPENDIX VI. 703. It is incumbent upon him to fulfill the duty demanded of him by the Roman Pontiffs. However, because he is burdened by increasing reports from the entire Christian world, he cannot always readily and promptly render judgment on every matter; consequently, sometimes the provision is excessively delayed and the remedy ineffective, when already, from the reading of these books, enormous damage has progressed. To avert this inconvenience, the Roman Pontiffs have not infrequently considered the matter, and, as we shall remain silent concerning the examples of other ages, in our own time, under His Most Holy [Pope] Leo XII, a decree was issued on March 26, 1825, inserted at the end of the *Indices*, and appended to these letters, by virtue of which it is commanded to the Ordinaries of the places to strive to prohibit and remove from the hands of the faithful all books published or disseminated in their dioceses that are harmful. Since this Apostolic mandate, with its prudent constitution, responds best to the present needs of the faithful and to the preservation of doctrine and morals, it pleased His Holiness Our Lord Pope Pius IX that its memory be recalled, its content be promulgated anew, and its observance be demanded by the Ordinaries of the places, which we diligently perform with these exhortatory letters, in the name and by the authority of the Apostolic See. If due obedience is given to this (as we are certain it will be), very grave evils will be removed, especially in those dioceses in which the need for prompt suppression is urgent. Lest anyone, under the pretext of a lack of jurisdiction, or under some other guise, dare to scorn or disregard the judgments and prohibitions of the Ordinaries with reckless audacity, His Holiness has granted, as is granted by the name and authority of His Holiness present here, that in this matter they may also proceed as delegates of the Apostolic See, notwithstanding any contrary circumstances. And let those works or writings that require deeper examination, or in which the judgment of the highest authority is required to achieve a salutary effect, be referred to the Apostolic judgment. The decree of His Most Holy [Pope] Leo XII, added to the Decree of the Holy Congregation (of the Index), on Saturday, March 26, 1825. His Holiness commanded that all Patriarchs, Archbishops, Bishops, and others entrusted with the governance of the Church, should recall to mind those things which, by the order of the Most Holy Synod of Trent, are set forth in the rules, and in the observations, instruction, additions, and general decrees of the Supreme Pontiffs Clement VIII, Alexander VII, and Benedict XIV, concerning the prohibition and abolition of harmful books, namely,

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the *Index Librorum Prohibitorum*, so that, indeed, because...

[*Latin ed. p. 704*]

704 APPENDIX VI. It is impossible to refer all the harmful books constantly appearing to the Index, and those who strive to remove them from the hands of the faithful, and through them to teach the faithful that a certain kind of food is salutary, while another is to be considered harmful and deadly, lest anyone, by taking up the former, be deceived and corrupted." Notice of the Sacred Congregation (Index), issued on Wednesday, March 4, 1828. "The Sacred Congregation reminds all Patriarchs, Archbishops, Bishops, Ordinaries, and Inquisitors of the places of what is prescribed in the Rule, among the edicts issued by the Holy Council of Trent, No. I I, with these words: The books of heretics, which treat of religion expressly, are entirely condemned; and what was commanded by the Most Holy Clement VIII in the instruction concerning prohibited books, with the following words, § VI: In general, concerning harmful and pernicious books, it is declared and established that those which, having been published in some language at the beginning, and then prohibited and condemned by the Apostolic See, are also considered by the same See everywhere in the world, under the same penalties, to be prohibited and condemned, whatever language they may be translated into." Notice of the Sacred Congregation (Index), issued on Friday, January 7, 1836. "Since it has been reported to the Sacred Congregation that the most sacred Books of the Bible have been printed in the vernacular in some places, and that the salutary laws concerning this matter are not observed, and since it is to be feared that, especially in these times, wicked men will conspire to insidiously introduce errors, disguised under the guise of the holy Divine Word, the same Sacred Congregation has judged it necessary to remind everyone again of what has already been decreed, namely that vernacular versions of the Bible are not to be permitted, unless they have been approved by the Apostolic See, or have been published with annotations taken from the holy Fathers of the Church or from learned and Catholic men (e.g., decree of the Sacred Congregation, Index, June 15, 1757, in addition to the Rule). Furthermore, it is absolutely necessary to adhere to what was established by the fourth Rule of the Index, and subsequently by order of the Most Holy Clement VIII, for that purpose."

[*Latin ed. p. 705*]

705 APOSTOLIC LETTER from the Most Holy Pope Leo XIII to the Copts, concerning the restoration of Christian unity. We were approaching the matter of restoring Christian unity, either in the East or by affirming it, having summoned the Patriarchs of those nations to consultation, when we received letters from the Catholic clergy, expressing obedience and entreaty to Us. These were soon followed by others, breathing a similar piety

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of children, and equally supplicating, commonly given by the best men of your nation: which, just as they arrived, moved such deep affection for you that it could not be concealed. This was made even more evident, because from both we clearly saw a singular zeal, with which you burn for the reconciliation and the salvation of your citizens, whom the Apostolic See has long lamented being separated from grace. This spirit of yours is truly worthy of the Catholic profession, worthy of true Christian brotherhood. Therefore, We have not hesitated to consider the particular requests you have made; but We have deliberately postponed replying to you at this time. It seemed more useful to your reasons if We could fully explain Our thoughts, and, together with the comfort of paternal care, impart to you some exhortation from the Apostolic Office. The Church and your nation have Our greatest benevolence, and you are not deceived; We desire nothing more than to raise the afflicted state of affairs of your community with present aid. — Indeed, from the very origins of religion, the closest and most illustrious bonds of kinship have existed between the Roman and the Alexandrian Churches. The very Prince of the Apostles took care to establish and maintain this, destined to be outstanding in no small measure. And no one is ignorant of how men distinguished by holiness and wisdom have held it, namely Dionysius, Peter the Martyr, Athanasius, Cyril; who, according to the proclamation of the holy Celestine I, have always been defenders of the Catholic dogma (1), and whose concord with the Roman Pontiff, and respect for his authority, shines forth in many deeds. Also, at the chair of Mark, there was a school of chosen doctrine (1).

(1) Ep. ad S. Cyrillum Alex. n. 1. Acta, Tom. XXVII. fase. COOXXIV. 46.

[*Latin ed. p. 706*]

70i) APOSTOLIC LETTER, most noble, in which it was already evident what human disciplines can usefully contribute to divine truth, either to illuminate it or to defend it, when advocated by prudent judgment. Moreover, your Church has brought forth specimens of excellent virtue, and the memory of those who, through the admirable institution of the great Anthony, transformed the desolate solitudes of Egypt into dwellings of evangelical perfection, will endure for all posterity.

Times hostile to Catholic unity followed, and these were also calamitous for the Alexandrian Church for a long time. Nevertheless, there were those within it who presented arguments not obscure, for the restoration of the ancient Roman faith and communion. It is indeed worthy of remembrance that, at the end of the great Council of Florence, our predecessor, Pope Eugene IV, having received a splendid delegation from the Copts and Ethiopians, reconciled the Alexandrian See and the associated peoples with the Apostolic See, to the great joy of the Church. And would that complete harmony had remained among all of them, and that the causes of alienation had not arisen again. Nevertheless, the Roman Pontiffs, moved

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by the same spirit of providence and charity, persevered in their concern for their erring children; and you yourselves, with grateful hearts and memories, have recalled the names of Pius V, Gregory XIII, Innocent XI and XII, Clement X and XI, Benedict XIV, and Pius VII in your letters. As for us, it is pleasing to us that you hold so deeply in your hearts, as you have declared, the concerns that we have undertaken for your affairs from the beginning of our pontificate, and it is even more pleasing to know that you strive with willing hearts and deeds to respond faithfully to those same concerns. For it is our primary concern that you have a suitable staff from the alumni of the Society of Jesus: men who are present to assist you, both in the sacred duties of the missions and in the education of young people, and especially in properly preparing adolescents of good character for the priesthood. Furthermore, by our mandate, the African Missionaries from Lyons, apostolic men, have also been sent to you, and they are still with you, especially in Lower Egypt. It is only right that you praise their excellent and fruitful work, as you do, and that you rightly anticipate the glory of your resurgent Church in the not-so-distant future. This very thing increases our expectation and strengthens our resolve, so that we have recently been most willing to grant something to your request. You have received from us a bishop for your people, a man flourishing in both age and doctrine, in counsel, and in example; who...

[*Latin ed. p. 707*]

Apostolic Letter. We spare neither vigilance nor effort for the salvation of all of you. And it was truly a source of great joy for Us to learn, as your recent letters have informed Us, that you have accepted the duties of your office with one heart, and that you have promised to fulfill your obligations with due devotion. — But We are very confident that We can accomplish even greater things for your benefit, if God favors us and if you all cooperate with all your strength and piety. And you, above all, must diligently strive to safeguard the deposit of faith, with prudence and inviolability; for it is not unknown to you how much good is exposed to the greatest danger, and how much it is subject to the deceitful arts and falsehoods of certain wandering men. And since it is of the utmost importance for the proper preservation of the faith that the minds of the young are imbued with the right discipline, therefore strive with all your might to keep it safe from all dangers, and to make it, therefore, a servant of religion and virtue, through numerous and excellent schools. In this most important matter, We also wish to provide you with good assistance. — But these things will not be effective, as they should be, unless they are accompanied by exercises of Christian virtue and piety, especially by those who are older in years and more distinguished in position; therefore, also apply to this with a more eager diligence, and be fruitful in every good work, and grow in the knowledge of God (1). The number of priests is

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desired, according to the opportunities of places and people; nevertheless, some of your own youth are already making good progress in this regard. If they are adorned with both virtue and sound doctrine, and if they are led by the zeal of the Catholic religion and true love of their country, they will surely bring you great joy, and even greater joy will follow, as more are encouraged to enter the priesthood by their example. Nor should less care and hope be devoted to the sacred virgins, dedicated to education; may they flourish under the protection of your Saint Catherine, the wise virgin and the unconquered. — There remains one thing in which we urge you earnestly: do not cease to cherish and cultivate the bond of unity of souls. May the clergy, among themselves and with the laity, strive to agree in feeling and action as much as possible; may both orders be bound together by the bond of perfection, the charity of Christ. That these things may have greater force in your hearts, let us invoke (1) Colossians, 1:10.

[*Latin ed. p. 708*]

708 APOSTOLIC LETTER: We, with the same pastoral concern with which your most blessed predecessor, Saint Cyril, addressed you from the patriarchal throne (1): Imitate, most beloved, and sharers in the heavenly vocation, and strive, each according to his ability, to follow the Leader of our salvation and the consummator, Jesus Christ. Let us be filled with that which elevates the soul, humility, and charity, which unites us with God, and with sincere faith in the divine mysteries. Avoid division, shun discord... nourish yourselves with mutual charity; hear Christ saying: "By this shall all men know that you are my disciples, if you have love one for another" (2). – Among the many fruits of this same harmonious charity, there is a particular one, namely, that those of your citizens who are separated from the religion, moved by such an example, will be more readily led to seek and desire communion with you in the Catholic faith. Since we earnestly desire this outcome, we urge you to strive for it, and to implore God with holy prayers; this is what we have enjoined upon all Catholics, and indeed, it is most pleasing to the heart to testify to the power of the ardent charity with which we pursue you, all of you who are separated from us by the Coptic rite, and whom we desire to embrace in the very heart of Jesus Christ (3). Let us say, brothers, and let us call others with sweet desire; let us foster the hope that you show for your return. Indeed, your benevolent grace towards us and ours has been demonstrated; equally, you frequently recall those times of our fathers, which were fruitful in holiness and glory. And this adds confidence, that many look to this See of Peter, as to a refuge of truth and salvation, and are now almost certain to incline towards the best intentions towards it. – Such intentions, inspired by the divine Spirit in upright hearts, which we have diligently embraced before, we now embrace with even greater zeal, and commend to the most merciful God with the greatest of prayers.

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Whatever we can do ourselves to contribute to the accomplishment of these things, be assured, we will not only not fail to do, but we will readily and abundantly provide, for the sake of conscience. Indeed, let the full measure of prudence and benevolence that was employed in this matter by the illustrious Pope Benedict XIV, our predecessor (1) Homily on the mystical supper, X from various, last chapter. (2) John 13:35. (3) Philippians 1:8.

[*Latin ed. p. 709*]

APOSTOLIC LETTER 709. Having considered, and having deserved much praise for your nation, it has been decided that We should emulate those who, with great prudence, have tempered authority with mercy. And so, likewise, We, as He professed, daily expect a rich harvest of spiritual joys, that is to say, the fruit of souls returning to the bosom of the Church; for We, holding the office of the Shepherd of Jesus Christ on earth, seek only and desire what was lost; and having found the sheep, We gather them to the fold, not with the rod of fear, but with the office of charity (1). — Our heart is open to you, and since nothing moves Us to encourage you except the charity of Jesus Christ, who calls you to His inheritance, the same charity compels and urges you to respond. Since these things are so, may the studies of Catholic unity daily increase throughout all of Egypt, and may those who have begun to bear good fruit reap a richer harvest; then truly, the Church of Alexandria may confidently strive for the excellence of its former prosperity; may it expect just benefits and adornments from the Roman Church, its mother, whom it has never ceased to love. — May the illustrious company of Saints, whom Egypt has sent to heaven, and the most blessed Peter and the most beloved Mark, your founders and patrons, and especially the most holy Virgin Mary, to whom the divine mother Cyril attributed the wonder of constancy, kindly favor these auspicious beginnings. Finally, let Us pray that the Holy Family, which, by divine command, visited this region, blessed it, and planted the first seeds of heavenly doctrine and grace in your ancestors, may mercifully regard each and every one of you, and may abundantly bestow the gifts of ancient piety. Given at Rome, near the Holy Peter, on the tenth day of June, in the year 1837, in the eighteenth year of Our Pontificate. LEO XIII, POPE. (1) Pastoral Instruction, addressed to the Copts, as was the case at that time, in the year 1745.

[*Latin ed. p. 710*]

710 EX 3. CONGREGATIONE S. CONCILII SEVERINI IUBILATIONIS, die 15 Decembris 1894. Per summaria precum.

COMPENDIUM FACTI.

Sacerdos Hercules Bonsignori, canonicus in cathedrali ecclesia S. Sev-

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erini, laborans infirmitate et aliis incommodis propter aetatem prope octogenariam, post quadraginta annos servitii choralis, quod laudabiliter se dixit peragisse, supplici libello ad SSmum die 26 Septembris anni 1893 porrecto, enixe iubilationis indultum implorabat.

Disceptatio Synoptica:

Scient omnes Ecclesiae disciplinam, qua Canonici aliique sacris ministeriis addicti, vacatione perpetua donantur, nihil de suorum beneficiorum fructibus amittentes, si per annos quadraginta continuos et laudabiliter eos inservisse probatum legitime fuerit.

In themate ex capituli relatione ab episcopo confirmata, constat can. Bonsignori assiduo et valde diligenti servitio suo muneri satisfecisse ab anno 1853 ad annum 1883, sane tantum 98 fallentiarum punctis multatus fuit; sed ab anno 1853, ipse morbo praepeditus a choro abesse coactus fuit, quin tamen indultum ab Apostolica Sede impetraverit.

Iudicandum ergo Emis Patribus relinquitur, utrum memoratus orator, etsi diligenter et cum laude choro semper interfuerit ab anno 1853 ad annum 1883, quadragenarium illud servitium expleverit ad iubilationem obtinendam requisitum, cum ad numerum 40 annorum conficiendum necessario computari etiam in casu debeant decem alii postremi anni, quibus licet ex gravi et usque perseveranti infirmitate a choro ab-

[*Latin ed. p. 711*]

In the year 711, Saint Severinus did not obtain the desired indulgence. Therefore, it seems reasonable to conclude that, while a canonical dispensation to be excused from the choir may be granted due to infirmity, provided that the infirmity persists, it does not, according to the practice of the Sacred Congregation, necessarily lead to the granting of an indulgence. In a case presented to the Sacred Congregation on September 24th and December 17th, 1718, the question was: "Can a dispensation be granted, making the jubilation canonical and beneficial, to those who have served in churches for a period of 40 years, even if, during that period, they have been absent from the churches, either due to infirmity or for another reason, with the necessary licenses and indulgences?" The Sacred Congregation responded: "Affirmatively, in the case of those absent due to infirmity, with the necessary licenses and indulgences." Similarly, in Eugubina on August 19th, 1775, a similar decision was reached.

From these precedents, it would seem that the granting of an indulgence should be denied, unless, perhaps, Your Eminences, in their benevolence, choose to act differently, as is sometimes done in cases of infirmity, where some leniency is shown regarding past failings, as we read in a document from Brictinorien, where, although the Bishop testified that the petitioner had been absent from the choir for six years out of the forty, and therefore did not consider him deserving of the indulgence, a dispensation for the

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jubilation was nevertheless granted.

Having considered these matters, Your Eminences, with their legal expertise, will determine what merit the petitioner's earnest prayers deserve. If they judge that the petitioner still requires further service to be granted the indulgence, they should consider the words written by the Bishop: "I earnestly implore Your Eminences to grant the petitioner a perpetual dispensation from choral service, with the faculty of receiving all distributions, both ordinary and extraordinary, perpetual and fixed, unless, of course, a different grace is more pleasing to you, which he earnestly desires."

It is not uncommon for the grace of the jubilation to be denied, while a dispensation to be absent from the choir is granted by the Sacred Order, as was the case in Firmana, regarding the Jubilation of September 13th, 1862, and in Urbinaten, on September 18th, 1802, etc.

[*Latin ed. p. 712*]

712 Saint Severin. Having considered these matters, the question was raised as to how prayers should be granted. RESOLUTION. The Sacred Congregation, after discussing the matter on December 15, 1894, decided to respond as follows: Regarding the granting of leave, the decrees are an obstacle; but for the granting of leave from choir service, for days and hours, during illness, and the loss of distributions, which, either by the will of the founder, or by the statute of the Church, are usually distributed only among the present members. PINNE. CONFRATERNITY RIGHTS. On April 14, 1894, and February 23, 1895, the Council of Trent, Session 22, chapter 9, concerning reforms, decreed. COMPENDIUM OF THE AGREEMENT. In the town of Petranico, in the Diocese of Penne, in the church of Saint Roque, which is not a parish church, and is subject to the administration of the Municipality, a Confraternity was established under the invocation of the Most Holy Virgin of the Seven Sorrows, with the addition of two other titles, the Most Holy Sacrament and the Dead Christ, by a prior Royal Decree of approval dated December 2, 1858, through a patent letter issued by the Most Reverend Father Prior General of the entire Order of the Servants of the Most Blessed Virgin, dated November 24, 1859; and it was legitimately established in the same church by a Diocesan Decree of approval and execution, dated March 29, 1860: "with the parochial rights of the place reserved," as decreed in the same Decree. The Municipality not only, up to the time of the establishment of the Confraternity, paid the expenses necessary for the repairs of the church of Saint Roque, but also provided for divine worship, and annually, as can be seen from the records, a sum of 7.50 Lire was paid to the Parish Priest as compensation for certain sacred functions performed before the feast day of Saint Roque, and others performed on that day in

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the church of this Saint.

[*Latin ed. p. 713*]

PINNEN. 713 Patrons. When the Confraternity was founded, the parish priest at the time, Reverend Lord Venantius De Vita, having relinquished the position of Director of the Sodalitas, peacefully continued the celebration of the customary functions on the feast of St. Roch, without anyone inquiring whether it was his right, by virtue of his title as parish priest or rather as Director of the Sodalitas, to perform these functions. Meanwhile, because the Church of St. Roch was seen as too small, with the increase in the number of members and the frequency of the faithful, it was demolished, with the approval of the Municipality, along with the old church and the small house attached to it; on the same land, with money contributed by the members, other faithful of the town, and the Municipality providing, in addition to the land and other assets, also a portion of the building materials, a new church was built, and in the year 1873, the Church of St. Roch was restored for divine worship. The parish priest Venantius De Vita held the office of Director of the Sodalitas until the year 1874, and in the year 1877 he passed away; but after relinquishing his office, without anyone objecting, he was accustomed to celebrate the functions of the feast of St. Roch in the Church of the Confraternity. He was succeeded in the parish benefice by Lord Aloysius de Vita, who, on the occasion of the feast of St. Roch, began to claim the right to celebrate the functions, citing his title as parish priest; the members protested, arguing that it was not lawful for the parish priest to do so, but that the Confraternity, which had obtained a canonical constitution in the old Church of St. Roch, and which, having built the new church with its own resources, certainly had the right to claim ownership of it. From this arose disputes and contentions that divided the people, and in the year 1884, in order to avoid the clashes between the contending parties, the Sodalitas was persuaded that it would be appropriate, on the occasion of the feast of St. Roch, to close the church and suspend the customary functions. The Bishop, approving of this plan, ordered the Confraternity and the parish priest to abstain entirely from such sacred functions, with the Church of St. Roch closed. But on the morning of the feast of St. Roch, the members of the Confraternity, foreseeing the impending storm, had gathered in the fields, intent on their work; others, favoring the side of the parish priest, were plotting how to—

[*Latin ed. p. 714*]

714. The keys could open the church of the Divine Patron. The prohibition of public supplications had greatly agitated the minds of even the most fervent faithful, at that time terrified by the Asiatic plague which was spreading widely. From midday on the feast day, under the usual hour of the public function, the suppressed fury erupted, and some of

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the bolder ones, urged on by the members of the confraternity, shouted that the church door should be opened, and they helped someone to enter the church through a window; after which, with the church doors opened, they rushed to the parish priest, who was taken to the church of St. Roch, where he celebrated the functions with the people present. Then, more acute discord arose between one side and the other, so that the political authority, on the occasion of the feast of St. Roch each year, cautiously watched and looked out for the preservation of public order, and because the Municipality was too openly favorable to the parish priest, the Royal Prefecture did not fail to admonish it, by a decree dated 1886, citing reasons of fact and law, to cease from factions and rather strive to reconcile minds. Meanwhile, the Municipality abandoned the arena, and the parish priest alone remained to contend against the confraternity, who on July 3, 1889, obtained from the Bishop letters granting him the right to perform functions according to ancient custom. However, the confraternity, deeply grieved by this extrajudicial judgment, persuaded the Bishop to retract it, as if extorted by deceit, which he did by inviting the confraternity to deliberate whether they wished the matter to be settled legally through the Episcopal court. Having embraced this proposal, the confraternity, on August 4, 1890, received a pronouncement from the Vicario Capitulare, stating that the church, then without a pastor, granted the parish priest of Petranici no special right over the church of St. Roch, which was established by the confraternity under the title of the Blessed Virgin of Sorrows, the Most Holy Sacrament, and the Dead Christ; and therefore, the confraternity was independent of the parish priest with regard to sacred functions, both simple and solemn, for the living and the dead; saving the parochial rights. The parish priest, on August 12, filed an appeal.

[*Latin ed. p. 715*]

PINNEN. 715 to the Sacred Congregation of the Council. In the meantime, the disputes could not cease, for the parish priest, invoking the suspensive effect of the appeal, believing that he had the right to celebrate the sacred functions, due to a quasi-possessory right previously exercised, opposed the Ordinary who was hindering this exercise, and petitioned the Sacred Congregation of the Council, and obtained, on July 27, 1892, the following possessory decree: "Since the parish priest, before the aforementioned sentence, has been in a quasi-possessory right to perform the sacred functions, he shall not be deprived of his possession for the present and until the outcome of the appeal judgment, and this shall be notified to the Bishop." The Ordinary of the place was grieved by this decree, believing that it favored the Confraternity rather than the parish priest, and, as before, so afterwards, he sought to delegate another priest, external to the parish and to the confraternity, to perform the sacred functions on the feast of Saint Roch; against which mode of action, the parish priest obtained

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another decree from the Sacred Congregation of the Council on July 15, 1893, namely: "in the Decrees of July 27, 1892."

Synopsis of the Dispute: Firstly, it was noted that the local municipality had a significant role in these disputes, and that the royal Prefecture had prepared a detailed report on this matter, in order to suggest a prudent course of action to the municipality, and that this political authority trusted that the sentence of the Ecclesiastical Tribunal would be a certain guarantee of reconciliation of minds and pacification. The Confraternity, on the other hand, based its defense on the full and absolute use granted to it from its inception in the Church of Saint Roch; reserving to the parish priest, as determined by the Ordinary, only parochial rights. The parish priest, however, cannot invoke an unforgettable custom of performing the sacred functions, insists the confraternity, since in the founding documents of the confraternity, nothing is reserved to him, it is presumed that such rights have been relinquished.

[*Latin ed. p. 716*]

716. PINNEN. Finally, it is observed that only the Municipality can be recognized as having a right to stand in court to defend its right of patronage in the Church of Saint Roch, whereas the parish priest, who in non-parochial churches, by common law, cannot arrogate any right to himself as a parish priest. The plaintiff in this appeal case has presented his printed defense, in which, in order to refute the arguments of the Brotherhood, he insists that the Municipality, by an unforgettable custom, has been appointed by the Municipality to perform the sacred functions in the Church of Saint Roch. He proves that the Municipality has rightfully exercised this right and can rightfully claim it in the present and in the future, based on the property of the Church of Saint Roch, which, he says, rightly belongs to the Municipality, granting only the use of the church to the Brotherhood of the same church. He argues that the Municipality was not the owner by right of domain because of the old, ruined church; for the new church was built on the same land and partly with funds provided by the Municipality. Therefore, he concludes, by what right can the Brotherhood exclude the Municipality from its church? For by excluding the parish priest, who performs the sacred functions by the Municipality's mandate, they are not excluding the parish priest, but the Municipality, or the owner. Finally, the plaintiff, concerned with a better understanding of his rights, refutes the argument of the Brotherhood, which asserts that the parish priest reserved no special right for himself at the time of the founding of the Brotherhood, since only his parochial rights were recognized to him by the Ordinary. He replies that no reservation was necessary to protect this right; although, for caution's sake, he made such a reservation when the new church, especially through his efforts and counsel, was built. The deceased parish priest reserved the right to perform the customary sacred functions for himself,

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which is proven by a notarial act obtained from a public notary, in which 11 witnesses confirmed all of these things. Furthermore, it was noted that, according to common law, it would be appropriate to revoke the provision concerning agreements contained in the celebrated Decree of the City and the World, published on December 10, 1703 (1).

(1) You have this decree in Vol. I, 591 in the note.

[*Latin ed. p. 717*]

PINNE. Concerning the common relations between the parish and the confraternities, it was established in the following manner: "And thus, with due regard to any conventions and agreements, perhaps previously made, concerning the establishment of confraternities, agreements initiated between the parties and approved by the Holy See, as well as to any indulgences, synodal and provincial constitutions, and customs, either ancient or at least centennial, it is declared and decreed, if it should seem good to the Most Holy Lord." It is doubtful whether, in the case in question, or even after the establishment, any such agreement exists in favor of the parish, or whether an ancient custom favors the same. Certainly, with regard to the reasons presented by the confraternity, the present matter concerns only the claim that the parish priest has not reserved to himself, nor does he have, any right to the sacred functions. For whether the Church of St. Roch is a sodality, or how and to what extent it has been held by the Municipality, is a question foreign to the present court. Furthermore, the parish priest is not acting in his own name, but in the name of the Municipality, when he claims not only the Church of St. Roch, but also the right to delegate a priest to perform the sacred functions of the feast of St. Roch; but he directly defends his own right, when, by ancient custom, or at least by an agreement entered into during the erection of the new church, he claims the right to celebrate these functions. With these considerations in mind, the purpose was to resolve the doubt: Whether the judgment of the Court of Pinne should be confirmed or overturned in this case. To this doubt, a response was given on April 14, 1894: "It is postponed, and it is to be written to the Bishop, so that the Municipality may set a proper term for asserting its rights." CONTINUATION OF THE CASE. The reason for this response was that the question was whether the parish priest had the right to perform certain functions on the feast day of St. Roch in the church, where a sodality had been established, and the parish priest claimed this right for himself, primarily because of a delegation, legitimately held by the local Municipality, which was considered the patron of the Church of St. Roch. The Syndic of the same Municipality, in order that the parish priest might not be dismissed from the judgment as if he had abandoned the action, performed the sacred functions not in his own name, but in the

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name of the Munic-

[*Latin ed. p. 718*]

718 - INNEN. Cum delegatio ageret, petiit et obtinuit interventum in causam. Quocirca, alia veluti phasim modo ingreditur controversia, cum quaeratur an loco Municipio ius constet, delegandi in Ecclesia S. Rochi, parochum aut quemcumque alium Sacerdotem, ad explendas in die festo huius Beati nonnullas sacras functiones. Sententia vero Curiae spectat alium quaestionis aspectum, nempe an parocho, qua tali, in Ecclesia S. Rochi ius competeret, de quo agebatur. Ordinarius iterum rogatus de informatione, retulit: occasione sacrae visitationis sibi innotuisse, Municipium illius loci concedendo Sodalitati S. Rochi usum Ecclesiae, non dedisse nuncium iuripatronatus, praesertim quoad preces novendiales et festum Sancti titularis indicendi; idem Municipium tranquille usum fuisse hoc iure etiam post institutionem Confraternitatis in eadem Ecclesia usque ad annum 1884. Syndicus in primis instat in probando pleno dominii iure in Ecclesiam S. Rochi; quod nec adversarii negant quoad tempus antecedens institutioni Sodalitatis in eadem Ecclesia. Nam Sodales affirmant, occasione institutionis Sodalitii, Municipium eidem cessisse omne suum ius in Ecclesiam; sed praecipue contendunt, quodcumque evanuisse Municipii dominium quando, vetere Ecclesia diruta, nova aedificata fuit curis et expensis piae Sodalitatis, sub anno 1873. Quum non possit probari, Municipium veterem Ecclesiam cessisse Sodalitati, quia nullo ex actu, nullo ex facto constat, Syndicus asserit nec novam ullimode in Sodalitii ius pertransiisse. Ait enim, in probatis esse Municipium demolitionis veniam dedisse, solum seu fundum protestasse pro novo aedificio, insuper 100 ducatos nummos contulisse praeter lapides veteris Ecclesiae, et alterius parvae domus continentis, nec non alterius aedificii vulgo appellati « Ospedaletto » aeque demolitorum; nec non donasse coementa, aestimata ad summam L. 208,08. Quae aedificationi subsequuta sunt, Municipii ius con-

[*Latin ed. p. 719*]

LUCCA. 719. Indeed, the image of Saint Roch was displayed on the main altar, to which the Church had been dedicated, and on the feast day of that saint, the Municipality, without any objection from the confraternity, arranged, as it had done before, that novenas and other customary functions be celebrated there, through the parish priest, delegated for that purpose. This action of the Municipality, the Syndic observes, having been approved by the higher civil authority, clearly demonstrates, and beyond any exception, that the Municipality held full rights over the matter. Furthermore, he notes that if the confraternity had been able to claim the Church in its entirety, by concession, construction, or any other title, it would never have dedicated it to Saint Roch, but rather to Christ Crucified and to the

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Most Holy Virgin of the Seven Sorrows, by whose names the confraternity is known; nor would it have tolerated functions performed by the parish priest by delegation from the Municipality. Then, the Syndic asserts that the Municipality held such patronage based on the testimonies of numerous witnesses. Finally, in order to preclude any avenue for the objections of the opposing party, the Syndic invoked the principle of prescription, from which, even if, by a flawed hypothesis, no other right could be claimed, the intention of the Municipality would be clearly demonstrated. The Syndic cites the authority of Cardinal De Luca, who wrote in *De Praescriptione*, book 3, chapter 10, paragraph 17: "Indeed, custom does not require an immemorial or forty-year prescription when there is a presumed title or its reputation, in the manner required in those cases where a right is resisted, and with which presumption proceedings are conducted in the decisions of this cause, because it is not contrary to, but rather beyond, the law, and consequently, a ten-year period is sufficient." The Syndic notes that the Municipality's peaceful use of the Church continued from the year 1860 to 1884; and that no protest or complaint was made to the Municipality, which, to have legal effect, should have been made, since it was the parish priest who performed the sacred functions, not in his own name, but in the name of the Municipality. The confraternity insists on claiming its right to the Church from the moment that it, with its own resources and diligence,

[*Latin ed. p. 720*]

720. They should rebuild the church. Furthermore, the Syndic himself admits, and willingly concedes, that the Prior of the pious Sodalitas oversaw the work and that individuals were specifically delegated to this undertaking. Therefore, in the archives of the Sodalitas, and not with the Municipality, are found the account books for the expenses of the construction, and affixed documents attesting to the settlements and the receipt of funds and other matters. From this, the members of the Sodalitas state that they received 637 loan notes from the Municipality, which the Sodalitas duly repaid in due time. They also note that the offerings of the faithful were provided as support for the construction, but with the express intention of providing aid and assistance to the pious confraternity, and not to the Municipality. Therefore, they conclude that the right of patronage does not in any way belong to the Municipality, because the old church was leveled, and the new one was built solely through the efforts, care, and expenses of the Sodalitas. Regarding the very right in question, both sides have taken note of this. This concerns the right of patronage. The verse "Patrons are made by dowry, building, and land" outlines the ordinary ways to acquire this right. Whether these conditions are required cumulatively or disjunctively is questioned by the Doctors; but they unanimously respond that they are to be understood disjunctively: Reiff, op. cit., no. 5. Therefore, three individuals can exercise the right of patronage, one by providing a

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dowry, another by building, and a third by contributing land. However, it should be noted that, for the purpose of acquiring the right of patronage, the complete reconstruction of a church that has been utterly destroyed is equivalent to building, in which case the original builder loses the right, and the one who rebuilds acquires the right of patronage, as stated by Fagnanus, op. cit., no. 52, and Pirhing, op. cit., no. S. These authors note that it makes no difference if the church is rebuilt with the same materials and stones, as also observed by the Glossa in op. cit., no. V, on the subject of Founders. Therefore, it seems that the Sodalitas can claim the right of patronage over the church based on the title of reconstruction. This is even more so because all the Doctors, after the Council of Trent, Session 25, De Reform, chapter 9, teach that the title of the right of patronage must be proven not only by simple presumption, but by an authentic document, which, in this case, is certainly the case.

[*Latin ed. p. 721*]

It does not appear that the Sodalitas is to blame for the fact that the rebuilding has already been proven: Reiff, op. cit., n. 15. On the contrary, the Municipality certainly has at least one title to claim the right of patronage to itself. For the land on which the Church was built, as the Sodalitas readily admits, was donated by the Municipality. However, this title, it is universally agreed, confers the right of patronage. Therefore, even if it is admitted that the Municipality did not rebuild the destroyed Church, it can nevertheless claim to be the patron of the Church by virtue of the title of foundation. Whether, and to what extent, the Municipality should have the Sodalitas as a co-patron, after the latter has at least contributed to the rebuilding, will be judged by the Most Reverend Fathers. In the meantime, it is helpful to note the words of Reiftenstuel, op. cit., n. 10: "... Indeed, if several contribute in one of the three ways or reasons alleged, e.g., through a donation, they are all, with respect to this title, patrons with equal right of patronage, even if one of them has contributed more; provided that they all together provide a sufficient donation, as noted by the cited Doctors. The reason is: first, because the very fact that he who contributes more admits another who contributes less, implies that he intends to share with him the right of patronage. Secondly, because the laws simply state that the right of patronage is acquired through a donation, without distinguishing whether one or several are donating. The same is true if several contribute to the construction or foundation; Abbot, loc. cit.; Garcia, loc. cit., n. 53. The same can be said if several contribute to the rebuilding of a completely destroyed Church, etc." These newly added points were intended to clarify the doubt as to whether the opinion of the Court of Pinnensis should be confirmed or rejected in this case. RESOLUTION. After deliberation by the Sacred Congregation on February 23, 1895, it was decided to respond: the opinion should be confirmed, saving the right of the Municipality to delegate a

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"Parish Priest," or another Priest, to perform the functions on the feast of Saint Roch and the preceding novena. Acts, Vol. XXVII, page OCOXXIV, 46.

[*Latin ed. p. 722*]

722 MONOPOLI: INTERDICTION DURING PROCESSIONS. February 23, 1895. Council of Trent, Session 25, chapter 13. In the town of Fasano, in the Diocese of Monopoli, where numerous confraternities had been established for a long time, a dispute arose concerning precedence in processions. This was the occasion. Among these, the confraternity of the Most Holy Rosary is the older one, and it had always enjoyed the right to precede all other confraternities in processions, except on the feast of the Most Holy Body of Christ, on which day the confraternity of the Most Holy Body of Christ is accustomed to lead the procession, a right recognized and confirmed to it by a Royal Decree of August 23, 1843. In the year 1886, a Third Order of Franciscans was established in the same town, to which, by right, it was clearly entitled to precede the lay confraternities in processions; however, they were unable to exercise this right peacefully, as confraternities protested against this novelty. Therefore, the brothers of the Third Order appealed to the Bishop to protect their right of precedence, but the Bishop considered it more prudent to strongly urge them to abstain from processions. Whether the confratres of the Third Order complied with the Bishop's advice is not clearly established from the records, but it is evident that the matter proceeded peacefully. In the year 1888, a Third Order of St. Dominic was also introduced in the town of Fasano, by a competent authority, granting to a certain priest, Peter Gaito, the Spiritual Director of the confraternity of the Most Holy Rosary, the faculty of admitting members of the Third Order into the confraternity, in the church of which confraternity Vincent Telesio, a nobleman, has the right of patronage. The Bishop approved of this. However, from the constitution of the Third Order of St. Dominic in the town of Fasano, countless disputes arose concerning precedence.

COMPENDIUM FACTI: A SUMMARY OF THE MATTER.

[*Latin ed. p. 723*]

MONOPOLITANISM 723 Regarding processions: on the object of the present controversy. Firstly, it was seen that the intention of the confraternity of the Most Holy Rosary was to obtain the establishment of the Third Order of St. Dominic in their own church, so that they might be enrolled in it and derive all its privileges; for which reason, afterwards, they wished to precede the confratres of the Third Order of the Franciscans and the confratres of the Most Holy Body of Christ in processions, since such a privilege of precedence pertains to the Third Order of St. Dominic.

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Against this intention, which the confratres of the Most Holy Body of Christ attributed to the confraternity of the Most Holy Rosary, the confratres of the Most Holy Body of Christ appealed to the Holy See. The Holy See, as is customary, for information and opinion, informed the General Master of the Order of Preachers, to whom the mind of the Holy Congregation was made known by the Procurator of the same Order, affirming that the confraternity of the Most Holy Rosary was, in every way, distinct from the Third Order of St. Dominic, which in the town of Fasano was neither confused nor could be confused with it. The Bishop also provided the Sacred Congregation with the requested information; and, having thus ascertained the facts, on June 4, 1892, it issued the following decree: "Regarding the letters presented in the Holy Congregation of the Council, both from Your Eminence and from the General Procurator of the Order of Preachers, concerning the prayers of the confraternity of the Most Holy Sacrament, in the place commonly called Fasano, the Most Reverend Fathers have responded: It does not follow from the affiliation of the confratres of the Most Holy Rosary to the Third Order of St. Dominic that the confraternity has acquired the right of precedence over other confraternities. And they ordered that this be notified, which we do with these present letters, to the same Your Eminence, to whom we pray that all good things may come from the Lord." Then, the directors of the Third Order of St. Dominic appealed to the Sacred Congregation, proposing the following question: "Does the confraternity of the Third Order of St. Dominic have the right of precedence in processions, even on the feast of the Body of Christ, over any secular confraternities, even those called the Most Holy Sacrament?" And the same Sacred Congregation, in response to the written report...

[*Latin ed. p. 724*]

724 In MONOPOLI, the Secretary, at the urgent request of one of his Consultors, decided to address the disputed matter in writing, stating: "Affirmative; provided that this association enjoys the privileges of the Third Order and proceeds collegially in its own manner." Consequently, controversies and animosities flared up with greater intensity, to the point that even civil authority had to take notice of the unrest in order to safeguard public tranquility. Members of the Most Holy Body of Christ, at S. C. C., insisted that some remedy be provided for this situation. Meanwhile, the same Bishop believed that he could resolve the matter through a decree, which forbade the confreres of St. Dominic of the Third Order from participating in the sacred processions. The Synodal Disputation of the Most Holy Sacrament's Sodality first indicated that the question was more a matter of fact than of law; and it confidently asserted that the facts and their supporting evidence had already been sufficiently demonstrated. For, it stated, in the first place, it is clear that the Confraternity of the Most Holy Rosary, as such, is in no way entitled to the rights and privileges granted to the

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Tertiaries. To prove the contrary, it would first be necessary to demonstrate that all the individual confreres had given their names to the Third Order of St. Dominic, which is not in accordance with the truth; but even granting this, which is not conceded, it is always true that the Third Order of St. Dominic could never have been confused with the Sodality of the Most Holy Rosary, as testified by the Procurator General of the Order, Father P. P. Therefore, it follows, that not only has the Confraternity, as such, not been transformed into the Third Order of St. Dominic, but it could not have been, given the regulations of the Order of St. Dominic, which prohibit Confraternities and moral bodies, collectively constituted, from being established as a Third Order, as S. C. C. has already defined, namely: "Regarding the affiliation of the confreres of the Most Holy Rosary to the Third Order..."

[*Latin ed. p. 725*]

"The Monopolitana [company], dated March 725 of Saint Dominic, does not follow that the Sodalitium [association] has acquired a right of precedence over other Confraternities." Then, the advocate continues, stating that, although the Tertiaries of Saint Dominic constitute a separate body independently of the Confraternity of the Most Holy Rosary, they do not have the right to claim precedence in processions. Nor, he says, does a certain rescript of the Congregation of Rites, issued on March 17, 1893, help them, from which they would seek to deduce that they have the right to precedence even in the procession of the Most Holy Body of Christ, provided they proceed collegially in their own habit. For he points out that one thing is to determine the rights that can generally belong to Tertiaries, and another is to determine the rights that belong to the Tertiaries of Saint Dominic in the town of Fasano. He readily concedes that certain rights and privileges have been granted to Tertiaries in general, among which is the right of precedence. But not all such rights belong to the Tertiaries of Fasano. The Tertiaries of Fasano, by a peaceful and uninterrupted custom, have never had the right to participate in processions, and therefore have never enjoyed the right of precedence. On this long-standing custom, he cites the citizens of Fasano as witnesses, and as the principal witness, the Bishop of Ruvo, who, in the decree in question, among other well-founded considerations, states: "Since the Tertiaries have never been present in any processions in Fasano, so that tranquility may be preserved in this regard, we prohibit them from ever participating, lest scandals and dissensions be renewed, which have occurred for other reasons." Indeed, he continues, given this, the arguments put forward by the opposing side regarding rights and privileges generally granted to Tertiaries are irrelevant. For no one is ignorant of the force of custom, which can even override written laws and abolish them: for custom itself is a law. Therefore, the rescript of the Congregation of Rites is reasoned about in this way. Either the rescript

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declared the rights and privileges that belong to Tertiaries in general, or it had in mind specifically the Tertiaries of Fasano. If the former, the privilege of the Tertiaries to participate in the procession...

[*Latin ed. p. 726*]

726 In Monopoli, a matter was brought before the court with precedence given to the case of Fasano, based on a contrary custom; however, if this is the case, the ruling is invalid, as it is obtained through deceit and trickery, because the petitioners deliberately concealed the existence of the contrary custom in their prayers. Then, the advocate notes that in this present controversy, it is not a question of abstract rights belonging to all Tertiaries, but rather whether the prohibitory decree of the Bishop should be upheld in light of particular circumstances. Indeed, no one will deny that the Bishop has the power to correct matters concerning discipline, piety, order, and tranquility. As the Holy Tridentine Council states, he must, as the occasion warrants, avoid scandals, correct those who are turbulent and wicked, foster peace among the faithful, and remove the causes of disturbances. Moreover, not only can the Bishop do these things, but he is also obligated to care for them within his diocese, according to his office. "In general, I say that it is incumbent upon the Bishop, and he must, to do everything that pertains to the preservation and defense of the doctrine of the faith and morals, and to the direction of discipline," as Berardi states in his Commentary on Ecclesiastical Law, I, dissertation 4, chapter II. With this established, he says that the decree of November 28 cannot be invalidated unless it is demonstrated by the opposing side that there were just and serious reasons lacking for issuing the decree. In response to this, the advocate exclaims that the case is already settled. For the Bishop had before him the confraternity of the Most Holy Rosary, who, not motivated by piety or a love for divine worship, but by ambition, had given the name of the Third Order of St. Dominic to themselves, in order to gain precedence over the other confraternities. They openly boasted of this; in order to achieve this goal, they moved every stone, so much so that they even resorted to secular means. On the other hand, the confraternities resisted, not because they held the institution of the Third Order of St. Dominic in less esteem, but because it was clearly evident that the Third Order of Fasano had been established out of hatred and to the detriment of pious associations. Hence, hatred, animosity, and anger arose; hence, strife...

[*Latin ed. p. 727*]

In MONOPOLI, the Fasanese district was divided into two factions, one favoring the Confraternities, the other the Tertiaries. Meanwhile, the day of the solemn procession of the Most Holy Body of Christ approached, and the civil authority, which should have intervened, remained inactive. It requested the Bishop to resolve the matter; but, having been unable to achieve

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this, it first prohibited the procession, then appointed itself an ecclesiastical judge, and, confusing the Tertiaries individually with the Confraternity of the Most Holy Rosary, and considering the Confraternity to have been transformed into the Third Order, finally pronounced its judgment, and, forgetting that the controversy had already been settled in favor of the Confraternity of the Most Holy Sacrament, ordered the procession of the Most Holy Body of Christ to be held with precedence given to the Third Order. However, after these events, the civil authority itself realized that public peace and tranquility could easily be disturbed; and therefore, it offered military assistance. Meanwhile, the Chapter of the Church of St. John the Baptist, perceiving the agitation of the people and fearing the impending dangers, canonically assembled, and, by unanimous vote, decided to abstain from the procession. Thus, due to the resistance of the Tertiaries of St. Dominic, the procession did not take place, the speaker concluded. However, in these circumstances, he continued, the Bishop could not permit a bloody conflict to occur during the solemn procession of the Most Holy Body of Christ, with contempt for the Holy Mystery and scandal to the faithful, nor could he allow the procession to nevermore take place due to the fault of the Tertiaries. Therefore, the Bishop did what he was obliged to do by his office; he removed the cause of so great an evil, and by his decree, prohibited all Tertiaries from participating in the processions. Therefore, the advocate concluded, the Confraternity of the Most Holy Rosary, as such, cannot defend the rights and privileges of the Tertiaries; nor do the Tertiaries, individually, have the right, contrary to the custom that prevails in Fasano, to participate in the processions. Therefore, the confreres who are opposed, whether collectively or individually, in no way contradict the Bishop's.

[*Latin ed. p. 728*]

728 In Monopoli, a decree could be issued that prohibits processions for just and reasonable causes. RIGHTS OF THE TERTIARY ORDER OF SAINT DOMINIC. On the contrary, the patron of the Tertiary Order of Saint Dominic first warned his clients that he had never intended to claim the privileges of this Order for himself, so that he might grant them to the Sodalitas of the Most Holy Rosary, but only to grant those rights that had been legitimately acquired, and which the Bishop solemnly recognized in his decree issued on the same day, which is the subject of the present controversy. This decree, which is under consideration, observes that the matter had already been brought before the most wise judgment of the Most Eminent Fathers, when the Bishop issued the decree. This, in fact, was a violation of the most established principles of law, which prohibit any innovation while a dispute is pending. With these things established, it is certain that the Tertiaries of Saint Dominic must be restored, according to the well-known principle: "He who has been despoiled must first be

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restored." Furthermore, it observes that the deprivation has reached the highest degree of injury, because, while the Tertiaries were fighting for their precedence, the Bishop deprived them of the very right to lead processions. In this regard, the Advocate notes that the Bishop falsely believes that he has absolute power in public supplications, so that it is permissible for him to admit or prohibit any sodality, always and at will, temporarily or permanently; which is false. For the brothers of the Tertiary Order, in any regular militia, are equal to those who are in regular orders. Therefore, their societies enjoy far greater rights than those used by lay sodalities. This is clearly demonstrated by numerous papal constitutions, which not only approved the Tertiaries, but also adorned them with the greatest privileges. And, among others, he recalls Pope Leo XIII, whom God may preserve for a long time. For on September 17, 1882, he issued the encyclical letter *Auspicato*, concerning the propagation of the Franciscan Tertiary Order, and on May 30, 1883, he promulgated the new constitution *Misericors Dei Filius*, and finally added: "Quo..."

[*Latin ed. p. 729*]

In Monopoli, in the year 729, it is not considered that anything has been taken away from the nature of the Order, which we most certainly desire to remain unchanged and complete. Furthermore, the Orator, after recalling that Regular Canons, although exempt, not only can, but ought to participate in processions, concludes that if Regular Canons and members of the Third Order are obligated to follow public supplications, it is unlawful for a Bishop to prevent them from fulfilling this duty. Thus, concerning the privilege of the Third Order of carrying the Cross in funerals and processions, the most recent opinion of the Sacred Congregation of Bishops and Regular Canons, dated March 18, 1887, in Tricarico, or the Order of the Friars Minor Reformers, is abundantly cited in the Acts of the Holy See, volume X, page 100. Indeed, he insists that not only do associations of the Third Order have the right to participate in supplications, but they enjoy a more distinguished privilege, namely, precedence over other lay groups, even those of ancient standing. This clear precedence is confirmed by numerous decisions of the Sacred Congregations, which are further supported by the most recent decision of the Sacred Congregation of Rites, before which the matter was debated: "Does the association of the Third Order of Saint Dominic have the right of precedence in processions, even on the feast of the Body of Christ, over any other lay confraternities, even those dedicated to the Most Holy Sacrament?" And the Sacred Congregation responded, "Affirmatively, provided that the association enjoys the privilege of the Third Order and proceeds in a manner proper to its collegiate nature." Moreover, the Archbishop himself has, on more than one occasion, acknowledged the precedence of the Confraternity of Saint Dominic, even over the Confraternity of the Most Holy Sacrament, whenever the Ordinary

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of the place permits them to be present in the processions. In addition, the advocate notes that Regular Canons enjoy a special privilege in the procession of the Most Holy Sacrament, which Pope Gregory XIII granted in his Constitution *Cum interdum*, § 2, in the following manner: "To all and each of the clergy and clerics, and to all ecclesiastical persons, both secular and of the religious Orders and military orders, to the Regular Canons, and also, etc., it is permitted to celebrate their processions, both on that very day of Sunday within the Octave of the Body of Christ, and on all the other days of the aforementioned Octave, etc."

[*Latin ed. p. 730*]

730 MONOPOLI. "Neither shall they be, in any way, disturbed, harassed, or troubled, etc., by virtue of the present decree, which we grant and permit." The speaker continues, "And not only in processions of the Most Holy Body of Christ do the Regular Canons of Saint Dominic enjoy this privilege, but they also possess the same power in other processions of the Holy Rosary." Thus, Cardinal Petrucci, *Commentaria* vol. 5, on Constitution XVIII of Sixtus IV, numbers 15 and 16. Then, the advocate points out that these privileges are granted to the Regular Canons not only for private processions and those held within the cloister, but also for public ones. For neither the Constitution of Gregory XIII, nor learned interpreters of that Constitution, have made this distinction, and where the law does not distinguish, neither should we. Pitonius states this in *Parerga ad Disceptationes Ecclesiasticas*, number 58: "Furthermore, I observe that the contrary interpretation is untenable, both because it concerns a public and solemn procession, which is never celebrated within the cloister, even by the Regular Canons, whatever may be said about private processions; and also because Gregory, by revoking the Constitution of Pius, granted the celebration of a procession on Sunday to all, not only to the Regular Canons, but also to the secular clergy, and therefore, he could not have intended to refer to processions within the cloister, while the secular clergy do not have a cloister." But even if this privilege did not exist, the advocate also argues that the Bishop cannot, by his own authority, prohibit processions, unless for a reason, and indeed, a reasonable one. Otherwise, recourse is granted to the Holy See, which either orders permission to be granted, or instructs that the customary practice be maintained. This is confirmed by the words of Ferraris, in the article "Processiones," number 10: "Processions introduced out of the devotion of the people and confraternities can be prohibited by the Bishop for a reason." And in numbers 26 and 27: "Regular Canons, in processions which they themselves hold outside the cloister, require the permission of the Bishop... Unless they have a special privilege for certain processions... However, Bishops and parish priests should not deny such permission to Regular Canons, otherwise, recourse may be made

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to the Apostolic See, from which a rescript will be obtained."

[*Latin ed. p. 731*]

MONOPOLI, May 7, 1831, to the Bishop, requesting that he grant permission, as written by the Sacred Congregation of Bishops in the Papal Bull of 1696. "These matters, if examined according to law, concerning the denial of permission at any time, follow the advocate, all the more so in the case of a perpetual interdict against all fraternities of the Third Order. Because the Bishop, in the disputed decree, appeals to a custom which he even calls laudable, namely, that it is not customary for the Tertiaries to participate in sacred processions, the advocate rightly observes that this custom is not laudable, being contrary to the Sacred Canons; but rather, that this custom has never existed, neither in the diocese of Monopoli, nor in other places in the province of Naples. Therefore, the advocate recalls from the records, the most recent testimonies by which it is demonstrated that the Tertiaries have participated with great solemnity in public supplications. With regard to the diocese of Monopoli, the advocate recalls that the Third Order of St. Dominic was established in the town of Fasan□ in the year 1889. After one year, the Bishop decreed that precedence should be given to the Third Order of St. Dominic by every fraternity. The directors of the Third Orders of St. Francis and St. Dominic, maintain that there has never been a prohibition of processions in the city of Monopoli. When the same Bishop, in his decree, objects to the Tertiaries scandals that are to be condemned, the advocate insists that there has never been, either in the year 1893 or in previous years, any tumults or disturbances that stirred up the passions. This is testified by the municipal magistrates in a letter to the President of the province on May 26, 1893, stating: although tumults and seditions were feared, nevertheless, complete tranquility was maintained. Therefore, the documents, according to the advocate, demonstrate that the scandals and quarrels were fabricated by adversaries, and that, even if they were true, it was a just and fitting exercise of episcopal authority to calm the passions, restrain violence, and admonish the offenders, rather than to disregard the rights and to perpetually prohibit the Tertiaries from all processions. The advocate insists that he cannot understand the reason for these quarrels and disagreements.

[*Latin ed. p. 732*]

732 In Monopoli, certain provocations had arisen. These did not concern a matter of precedence, which the Sacred Congregations, and the Bishop himself, had established, nor could the confraternity of the Tertiaries renounce its rightful place. It was not out of ambition or rivalry, for he who rightly uses his own rights does no injustice to anyone. Therefore, the speaker concludes that the disputes concerning the confraternity of the Most Holy Body of Christ are to be feared, which the Most Holy Order had

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requested: either the Third Order of St. Dominic, and any other [order], should be dissolved, or, if they remain, it should not be permissible for them to go outside their own churches, lest the peace of the faithful be disturbed. After these remarks, the speaker affirms that a case has been brought before them, but then he recalls the most recent decision of the Sacred Congregation, *E E. et R R.*, in the matter of Sypontina, or the Third Order of St. Francis, dating from the year 1892. The question was this: In the city of Manfredonia, there existed a confraternity of the Third Order of St. Francis. This confraternity had repeatedly asserted its right publicly to go out from the church, under its own cross, to conduct the burial of deceased confreres, and to participate in processions. The Archbishop had opposed this, first because he considered it contrary to the founding principles of the confraternity, and second because in that small city, there were four confraternities, and therefore, disagreements were to be expected. The Sacred Congregation, as usual, responded "To the Procurator, for information and a vote." The speaker quotes the words of this vote, namely: "Indeed, the Most Reverend Archbishop of Manfredonia fears that difficulties may arise with other confraternities in the same city; but if the Most Reverend Ordinary prudently and opportunely makes known the aforementioned decisions of the Holy See, all disputes can easily be prevented, and the members of other pious confraternities, as well as all true Catholics, will give obedience, and will say: Rome has spoken, the matter is concluded." Finally, certain doubts were raised: "I. Whether and in what way a secular confraternity of the Third Order of St. Francis, established in the city of Manfredonia, can go outside the church to bury the bodies of confreres and carry its own cross before it, in that case?"

[*Latin ed. p. 733*]

"MONOPOLI'ANA 733 And inasmuch as it is affirmed: 'I. Whether the aforementioned Confraternity can have precedence over other confraternities already existing in the case? II. Whether and in what manner the same Confraternity ought to depend on the jurisdiction of the Archbishop in the case? And the Sacred Congregation responded: To I. Affirmative, with its own banner and habit of the Third Order. To II. Affirmative, except for those matters pertaining to internal discipline and direction (1). Considering these points, the doubt was to be clarified: Whether the Decree issued by the Most Reverend Bishop of Monopoli on November 28, 1893, concerning the Brothers of the Third Order of St. Dominic being prohibited from participating in processions in the case, is to be maintained. RESOLUTION. The Sacred Congregation of Councils, after deliberation on February 23, 1895, decided to respond: The Decree of the Bishop is not to be maintained, and it is the right of the Third Order of St. Dominic to participate and precede in processions, whenever they participate with their own habit

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and collegially; excluding entirely those who are not regularly enrolled in the same Third Order. From which it is gathered: That the members of the Third Order enjoy the privilege of participating and preceding in any processions of the laity; and that the Third Order of St. Dominic should also precede the Third Order of St. Francis in processions. (1) Recole Vol. XXV, 238"

[*Latin ed. p. 734*]

734 FROM THE DECREE OF THE HOLY CONGREGATION OF BISHOPS AND REGULARS OF NICE, dated April 5, 1895. In the year 1820, a pious priest, Eugenius Spitalieri of Cessole, in the city of Nice, founded a House called "Providence" for young girls in danger from the temptations of the world, and endowed it with suitable statutes, also strengthened by royal approval. According to these statutes of the House, the administration consists of the Bishop of the time and two Consuls of the city, to whom, by decree, a member of the founder's family was later added. Various articles of the administration then define the duties, and notably, Article 9 states that it is the responsibility of the administration to appoint a man of integrity of morals, prudence, and charity, and, if possible, a cleric, as Protector of the Work, whose duties are outlined in Articles 14 and 15: to procure alms, to urge the collection of revenues, and to honestly place the girls who leave the institution. The office of Protector was first held for life, by royal decree of July 11, 1820, by the Founder himself, of Cessole. Seventeen years after the founding of the House, in the year 1837, a certain pious woman, Angela Pazeri, widow of John Blanchi d'Aiglun, established a canonry in the Cathedral of Nice, with an annual income of 600 livres, to be given to the Rector of the aforementioned House; and, while retaining for herself, as long as she lived, the right to nominate, the founder wished that, after her death, this nomination should be carried out by the Chapter, after a presentation of three candidates, to be made by the administration of the Pious Work, or the House of Providence; then, the qualities to be possessed by the candidate should be specified.

[*Latin ed. p. 735*]

NICE. At the age of seventy-three, and burdened with new canonical duties, Aloysius Bres was chosen for this canonry, by the same instrument of institution, which had previously conferred an honorary canonry upon him in the same Cathedral. Shortly thereafter, the Bishop of Nice issued the decree of canonical erection of the aforementioned benefice, simultaneously confirming the nomination made by the foundress; but in the deed of erection, no mention was made either of the active right of the Rector for the time being, of the aforementioned Hospice, or of the presentation of three candidates to be made by the Administration of the Hospice. In the year 1841, on January 12th, Aloysius Bres resigned his canonry, and

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upon acceptance of the resignation by the foundress, she, in the same act, nominated his brother, the resigning brother, namely Joseph Bres, to the vacant canonry; upon the death of the foundress on October 13th of the same year, the Chapter of the Cathedral refused to admit the priest Bres to the canonry, and upon the matter being brought before the Sacred Congregation of Bishops and Regular Canons, a response was received on this day, February 7th, 1845, stating that a new nomination should be made "so that Joseph Bres, with a dispensation regarding the lack of age, should be included in the presentation of three candidates by the administration of the Pious Work of Providence." Following the course of this resolution, the foundress of Cessole presented three candidates to the Chapter, who, on March 20th, nominated the Reverend Joseph Bres to the canonry. In the meantime, on March 28th, 1864, the priest of Cessole passed away, and the canon Joseph Bres, who had been his assistant in the office of Protector of the Hospice, retained that office until his death on September 2nd, 1893. The administrative commission of the Hospice, adhering to article 9 of the statutes, having declared itself not bound by the presentation of three candidates, proceeded to the nomination of a new Protector and canon on November 10th, 1893. "The Administrative Commission of the Hospice of Providence nominates the Reverend Joseph Fabre (Vicar General of the Bishop of Nice) as Protector of the Hospice, with the exclusive right to the canonry of Aiglun, and assigns to him—"

[*Latin ed. p. 736*]

736 jsiciEN. gnat libel. 1600, declaring that this canonry is contained within the sum of the revenues of the prebend. Following this nomination, the priest Fabre requested to be admitted among the canons of the Cathedral Chapter; but the Chapter strongly opposed, alleging 1.° that the canonry of Aiglun is not annexed to the office of Protector of the Hospice, but to the office of Rector or Spiritual Director of the same Hospice. 2.° That it is the Chapter that has the right to nominate to the same canonry, after a prior presentation of three candidates by the administration of the Hospice, and consequently, the nomination of the priest Fabre is null; whereas, on the contrary, the administration, citing article 9 of the statutes mentioned above, and the priest Fabre, who nevertheless later withdrew from the dispute, maintained that the canonry is annexed to the office of Protector and to the administration; and not at all to the Chapter, and that the Chapter has no right to nominate to it; each party chose its advocate. In the Synoptic Argument, the advocate first maintained that the canonry of Aiglun is annexed to the office of Protector of the Hospice, so that by nominating the Protector, the administration is also considered to have nominated to the canonry. He states that it has been demonstrated that the priest of Cessole was appointed Protector of the Hospice for life by Royal Decree, and that the foundress, Angela Pazeri, established the canonry in favor of the Rector

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for the time being of the Hospice. He then adds that these two persons are not distinct from each other, and he cites a letter from the same foundress dated June 11, 1837, in which she declares that, upon the death of the priest of Cessole, she wished to provide for the institution of a canonry in favor of the Rector for the time being, who would succeed him in the administration of the Hospice. Therefore, the advocate concludes, if the priest of Cessole was the Protector of the Hospice, and he who succeeds him in office is the Rector for the time being, it is clear that the Rector and the Protector are not other than one and the same person. But, he responds, if anything to the contrary occurred, when the priest of Cessole was alive, and another obtained the canonry, then this separation was temporary and ceased with the death of the priest of Cessole. JURISDICTION OF THE ADMINISTRATION OF THE HOSPICE.

[*Latin ed. p. 737*]

737 NICIEN. The priest of Cessole states: "Otherwise, this is an exception, made while the founder is still alive, and it is well known that the exception confirms the rule in the opposite direction." Furthermore, the Defender observes that if this separation were permitted, not only would the Hospice be burdened with new expenses, but, more importantly, a new person would be present in the administration, which is contrary to the Hospice's statutes, which expressly designate who should be in charge. Having established that the canonry is attached to the office of Protector, the Defender proceeds to inquire about the relevant right of nomination. He states that, according to Article 9 of the Statutes, the Hospice's administration has the absolute and unqualified right to nominate the Protector; that this right is so exclusive that, in the case of the nomination of the priest of Cessole, on behalf of the Supreme Prince, to the office of Protector, a royal derogation from the statutes was necessary. Having established this, the Defender continues, it cannot be explained how this right exists in the administration with the obligation, as the Chapter desires, of presenting three candidates for nomination to the canonry attached to the office of Protector; therefore, when the right of the administration is questioned, the condition imposed by the founder of Aiglun should be considered null and void, like certain conditions added to contracts that vitiate and do not vitiate. However, the decision of the Holy Congregation of Bishops and Regular Canons of February 7, 1845, which is invoked on the other hand, is declared not to be relevant to the matter. There, the issue was the invalidity of a nomination made by the founder after the resignation of the canonry of Aiglun, which was tendered by Aloysius Bres; and the administration was neither summoned to the cause nor heard; therefore, the judgment rendered cannot affect it, according to the legal maxim "res inter alios acta, nobis nec prodesse, nec nocere potest." Moreover, the Defender argues that the alleged right of the Chapter cannot be validated by the action of

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the priest of Cessole, who, on the occasion of the nomination of Joseph Bres to the canonry, presented three candidates to the Chapter, as if the administration had relinquished its right, and the prescription in favor of the Chapter had begun: *Di Acta*, Volume XXVII, page 6044, 47.

[*Latin ed. p. 738*]

7o8 NICE. For indeed, he received no mandate from the administration for this; therefore, since he acted in his own name, he could not prejudice the administration; regarding the invoked prescription, he maintains that it cannot hold, neither in law nor in fact: not in law, because what the Supreme Prince has reserved for himself cannot be prescribed; not in fact, because the time for prescription has begun to run out in the year 1860, when the city of Nice was annexed to France, and the legal existence of the Hospice was established and declared by a royal decree. Finally, he does not fail to reveal the damages and dangers that may arise from the alleged admission of the law in the Chapter. Firstly, since the statutes for validating its actions are often presented to the Government by the administration, the Government can easily recognize this change in the nomination of the Protector and thus obtain the opportunity to incorporate the Hospice, now independent, into the public office or administration of charity in Nice. Secondly, according to the will of the founder, Di Cessole, his heir has the right to ensure that the conditions established for the Hospice are observed to the letter, and in the event that these are neglected, to claim the assets of the Hospice: therefore, from the newly introduced method of choosing the Protector, he could easily arise to reclaim the bequeathed assets.

ARGUMENTS OF THE CHAPTER. On the contrary, those who defend the arguments of the Chapter state that the claim of the administration regarding the Hospice is entirely new: indeed, no one before the death of Canon Bres ever doubted that the nomination pertained to the Chapter, with a prior presentation of three candidates, including the administration itself, as is evident from its deliberation of January 20, 1885; but after the death of Canon Bres, the administration, having removed the veil, does not declare this deliberation and claims a right that it does not have, demonstrating that this right belongs exclusively to the Chapter, not only regarding the acts of the foundation of the canonry, but also regarding the very erection of the canonry. From this, it concludes that any election made contrary to the prescribed form is entirely null. With these premises, he argues that the canonry of d'Aiglun is...

[*Latin ed. p. 739*]

NICENE. 739 It is not safe to assume that the Protector and the Rector of the Hospice are the same person, but rather that they are distinct, as is clearly indicated by the founding documents. This distinction is further demonstrated by the obligations imposed by the foundress on the new

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canon, which are entirely different from the duties that the statutes place upon the Protector. Furthermore, the two roles have different missions: the Rector is responsible for the spiritual direction of the community, administering the sacraments to the women and instructing them in religion, while the Protector oversees the proper economic management and discipline of the Hospice. Moreover, the office of Rector, being attached to the canonry, is a permanent position, whereas the Protector's office can be temporary; the former must always be held by an ecclesiastical person, while the latter, according to the statutes, can also be held by a layperson. Therefore, it is not surprising that there is a different method for designating these two distinct individuals. However, the foundress, in a letter dated June 11, 1837, argues against the opposing view, stating that it should not be considered, because it was written almost two months after the founding, and the diocesan curia did not take it into account when it was presented in 1843. But let us suppose, for the sake of argument, that the person called to the canonry is only the Protector of the Hospice. This does not mean that the patron would necessarily retain the right to investiture to the canonry. In this case, there would be a conflict between the statutes and the act of founding. However, neither of these prohibits the separation of accumulated offices in one person; indeed, this separation of attributions is suggested by the very nature of the things themselves, because one person cannot fulfill all things, and the office of the superior in the community is not easily reconciled with the office of the Spiritual Director. Therefore, in this hypothetical case, it would be necessary to separate the offices according to the Defender. But the Defender argues that, suppose the office of Protector is absolutely inseparable from the office of Rector, so that only one person must hold both offices: in this hypothesis only...

[*Latin ed. p. 740*]

740. NICENE. Duo viae sunt ad evitandum conflictum inter statutum Hospitii et tabulas fundationis canonicatus, nempe vel moderatio articuli 9 statuti ad salvandum canonicatum, vel relinquere seu renunciare Canonicatui ad statutum manutenendum: Prima via non videtur Defensori impossibilis: non enim agitur de deroganda lege generali proprie dicta in bonum comunitatis iussa, sed de temperando simplici statuto privati instituti, quod urgente necessitate optime moderationem pati potest, et iam passum est quando in administratione quarta persona est introducta, nempe haeres fundatoris. Si vero administratores aliam viam inire volunt, tunc valedicendum erit canonicatui d'Aiglun, qui consequenter remanebit purus et simplex canonicatus, absque honore complendi officium spiritualis Directoris in Hospitio. Progrediens Defensor ad refutandam theoriam de conditionibus impossibilibus, ex adverso productam, dicit quod haec male in casu applicatur; siquidem ea locum habet in testamentis, et inter contractus tantum, in matrimonio, non in actibus inter vivos, qualis censeri de-

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bet actus fundationis canonicatus d'Aiglun: sed deinde etiamsi admitteretur theoria adversariorum, consequentia semper esset favorabilis Capitulo, quia posita impossibilitate conditionis adiectae a fundatrice, donatio ab ea facta Hospitio corrueret, et sic remaneret simplex et purus canonicatus in Cathedrali, absque honore speciali curandi bonum spirituale Hospitii. Ex hucusque expositis Defensor infert nihil agendos esse inanes timores, vel terricula obiecta ab administratione vel de cessatione independentiae Hospitii et eius incorporationis officio publicae beneficentiae, vel de vindicatione bonorum Hospitii ex parte haeredis fundatoris: non enim res est de violatione statutorum, vel de immutatione radicali Instituti, sed de simplici moderatione articuli 9 statuti obtinenda a competenti auctoritate: hinc in memoriam revocato quod ius Capituli innititur, nedum pacifica et non interrupta possessione, plus quam quinquennium, sed etiam aliis solemnioribus titulis, qualis est, actus fundationis.

[*Latin ed. p. 741*]

NICE. The decree of the erection of the canonry, dated 741, and the solemn judgment of the Holy Congregation of Bishops and Regulars, conclude by requesting a decision or declaration, under both points, favorable to the Chapter, namely that the canonry should be annexed to the distinct office of the Rector for the time being of the Hospice, and that the Chapter should be responsible for the nomination, after a prior presentation of three candidates. Thus, having summarized the reasons of the parties, the following questions are to be elucidated:

I. Whether the canonry of Aiglun, duly erected in the Cathedral of Nice, should be considered annexed to the office of the Protector, or rather to the distinct office of the Rector, or spiritual Director of the Hospice, as the case may be.

II. Whether and in what manner the Chapter of the same Cathedral has the right to nominate to said canonry in the case in question?

RESOLUTION. The Holy Congregation of Bishops and Regulars, after mature deliberation, responded on April 5, 1895.

To I. Affirmative, with regard to the Protector; negative, with regard to the Chaplain, commonly called the *Aumônier*.

To II. Affirmative, so that the Chapter has the right to demand the presentation of candidates only in the case in which the Protector, or the Rector, does not wish to be presented, or does not possess the required qualifications; but in the case in which the aforementioned Protector possesses the aforementioned qualifications and wishes to obtain the canonry, he must be chosen by the Chapter as a passively called candidate.

[*Latin ed. p. 742*]

742 FROM THE HOLY CONGREGATION OF RITES IN VELLETRI. Concerning the practice of not kneeling at the words "and was incarnate"

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in the Creed: The Prefect of Ceremonies of the Cathedral Basilica of Velletri, who, according to the Capitular Constitutions, is obligated to ensure that all matters pertaining to the ceremonies are performed properly and correctly by everyone, humbly presented the following to the Congregation of Sacred Rites for appropriate consideration: "On feast days, in the choir, in addition to the Canons, there are Beneficiaries and the Venerable Seminary Students. In the solemn Mass, during the Creed, everyone recites the Creed with the celebrant, and simultaneously kneels at the words 'And was incarnate...' Upon the completion of the recitation, everyone sits. Then, when the aforementioned verse 'And was incarnate' is sung, the Beneficiaries and Seminary Students, while seated, do not make a second kneeling at those same words. And this practice has been in effect for two years, by virtue of a resolution adopted in a meeting of moral and liturgical cases, held on July 20th of the year 1893, with the Reverend Auxiliary Bishop present, along with the General Vicar and the Canons, Beneficiaries, and Seminary Students who are engaged in theological studies. Subsequently, he inquired: 'Is it permissible to maintain such a practice of not kneeling, as in this case?' And the Holy Congregation, after carefully considering the report of the undersigned Secretary, decided to respond as follows: Affirmative, according to the Decrees in the Neapolitan document of February 15, 1659, and the Majorcan document of February 13, 1677 (1), and the practice (i) For the convenience of the readers, and for what pertains to the matter. NEAPOLIS, February 13, 1659. Question 2: Whether, while the Creed is being sung by the Cantors, with due observance of custom, the Canons should incline their heads at the verse: 'And was incarnate, etc.,' while the others, namely the lower clergy, should kneel, and whether the celebrant, if he is among the hebdomadarii, is also obliged to kneel?

[*Latin ed. p. 743*]

FROM THE SACRED CONGREGATION OF RITES, 743, concerning Basilicas of the City. And thus it was decreed and ordered to be observed. On June 15, 1895. CAL, Cardinal ALOISI-MASELLA, SECRETARY. S. R. C. PREFACE. SAN MINIATO. Concerning the Beatification and Canonization of the Venerable Servant of God, Theophilus of Curte, a priest, professed member of the Order of Friars Minor of the Observance of Saint Francis. REGARDING A DOUBT: Concerning what miracles are to be considered in the case and for the effect of which they are being examined? Indeed, the Venerable Theophilus, having excelled in virtues and possessing extraordinary gifts, so that, even by his mere presence, many were moved to piety. For he, following the Apostle in a singular manner, sought to please his neighbor for the good and for the edification of souls, and he constantly advanced the fruits of his justice;

RESPONSE TO THE SECOND QUERY, Regarding the verse: "And the

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Word was made flesh, etc.," all, except the Bishop, are to kneel whenever they stand and encounter those words: "And the Word was made flesh, etc.," whether they are spoken by themselves, or sung by the choir, or even if they are seated, on the very feast of the Nativity, as well as on the feast of the Annunciation of the Blessed Virgin Mary. On other days, all who are seated indiscriminately, without exception, are to incline their heads. Nor does the ceremonial disposition apply in this case, whereby, while the Canons incline their heads, the others kneel.

MAIORICA. On February 15, 1677. 2°. Regarding the verse: "And the Word was made flesh, etc.," all, except the Bishop, are to kneel whenever they stand and encounter those words: "And the Word was made flesh, etc.," whether they are spoken by themselves, or sung by the choir, or even if they are seated, on the very feast of the Nativity, as well as on the feast of the Annunciation of the Blessed Virgin Mary. On other days, all who are seated indiscriminately, without exception, are to incline their heads. Nor does the ceremonial disposition apply in this case, whereby, while the Canons incline their heads, the others kneel, as was also decided by the same Sacred Congregation on a certain day in Naples, February 15, 1659. And thus it was decreed and ordered to be observed.

[*Latin ed. p. 744*]

744 FROM the acts of the Congregation of Rites, concerning Corsica, where the Curia was established, the family of the Minor Franciscans, to whom he gave his name from his youth, and the people of Etruria, whom he made illustrious through his unwavering zeal for souls, attracted by his charity, and whom he inspired with great veneration and love. Indeed, the fame of him spread to other peoples, and while he was still alive, it was customary for all to call him, striving to do so, by the name of "Saint," referring to the image of Christ. Nor were there lacking men of conspicuous dignity who often compared Theophilus with Blessed Thomas of Cori, whom he had not only found united to himself in society and similar in character, but also as a companion in labors and an equal in fortitude. For, having converted wicked men to a better way of life, having drawn religious individuals closer to the perfection of the Christian life, and having, with an unconquered spirit, scorned countless misfortunes of every kind, he possessed this one thing: to be a help and comfort to the Church, which was then sorely afflicted. And this was so great that it was said that even heavenly prodigies attested to the sanctity of the servant of God. To ensure that this opinion continued to grow and flourish, death itself contributed, for the Venerable Theophilus, having accumulated great merits, peacefully departed this life in the town of Phiceclo, on the fourteenth day before the Kalends of June, in the year one thousand seven hundred and forty. He had indeed instilled great confidence with the sentiment that nothing should be expected from God, who, having confirmed the hope of the

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people for the elevation of his servant to the heavenly homeland, especially near his precious relics, had confirmed it with many miracles. Therefore, in order to honor this most deserving man with the honors of the Blessed, and to examine the monuments of his exceptionally virtuous life in all respects, with the gravity of judgment that was appropriate, and to promote the cause, the Sacred Congregation of Rites, moved by this, decreed that Pope Pius VII, three years after his five-year exile, with the applause of the entire Catholic world, upon his return to the Roman See, would solemnly declare the Venerable Theophilus blessed, on the day dedicated to the Virgin Mary, the sixth day before the Ides of September, in the year one thousand eight hundred and seventeen. In order that, with piety firmly established, the truth of the prodigies might also be vindicated, which the people, invoking his help and intervention with God, had not ceased to attribute to Theophilus, investigations were happily begun, according to the rules of law, concerning two specific miracles, namely...

[*Latin ed. p. 745*]

Having completed the quadruple process prescribed by the Sacred Congregation, the matter was debated. Indeed, in the preparatory meetings held before the ides of May in the year one thousand eight hundred and ninety-two, in the halls of the Most Eminent Cardinal Aloisi Serafini, Relator of the Cause; in two preparatory meetings held at the Apostolic Palace in the Vatican, on the tenth day before the Kalends of May in the following year one thousand eight hundred and ninety-three; and subsequently, with the matter reopened for further consideration, in the year one thousand eight hundred and ninety-five, on the eighteenth day before the Kalends of February; and finally, in the general assembly before the Most Holy Pope Leo XIII in the Vatican, on the day after the Kalends of April of the same year. In this final Congregation, the Most Reverend Cardinal Vincent Vannutelli, Relator of the Cause, having taken the place of Cardinal Serafini, who had passed away, proposed the following question for discussion: Whether, and concerning which miracles, there is sufficient evidence in this case and for the purpose in question? And all those present, the Most Reverend Cardinals and other Consultors, gave their individual votes. However, the Most Blessed Pope Leo XIII, although he indicated that he approved of the evidence presented, nevertheless, considering the importance of the matter, and wishing to seek more extensively the divine wisdom from the Father of Lights, deemed it prudent to postpone his judgment. But on this auspicious day, which coincides with the solemn feast of the Ascension of Christ, it was deemed necessary to add a final testimony to the miracles presented to support the cause of the Venerable Theophilus, who had shown a singular love for the triumphs of Christ; so that, not without the divine providence, in these times when the Faith is greatly challenged, a new light of miracles might arise to encourage the

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spirits to ascend more vigorously to the heavens. Therefore, having concluded this sacred and most religious ceremony, he entered this Vatican hall, and seated on the Papal throne, ordered that the Most Reverend Cardinals Caietan Aloisi-Masella, Prefect of the Sacred Congregation, and Vincent Vannutelli, Relator of the Cause, and the Reverend Father Augustine Caprara, Promoter of the Faith, and myself, the undersigned Secretary, be summoned, and, in their presence, he declared: That there is evidence of two miracles, namely, the first: the instantaneous and perfect healing of the girl, Iosepha Aleati, from a long-standing and severe pain in the back; and the second: the instantaneous and perfect healing of Francis Tognetti from an old paralysis, caused by sclerotic myelitis.

[*Latin ed. p. 746*]

746 FROM THE SACRED CONGREGATION. This Decree was ordered to be published and recorded in the acts of the Sacred Congregation on the tenth day before the Kalends of June, in the year one thousand eight hundred and ninety-five. G. CARDINAL ALOISI-MASELLA, Prefect. L. œ R. S. ALOISIUS TRIPEPI, Secretary. DECREE OF THE WESTMINSTER ARCHDIOCESE. Concerning the confirmation of the cult of the venerable servants of God, Hugh Faringdon, Richard Whiting, John Beche, Roger James, John Thorne, William Eynon, John Rugg, and Hadrian Fortescue, and the servant of God Thomas Percy, in England, for the sake of the faith of the martyrs. A most auspicious day dawned for the faith of the English and for the Catholic Religion on the twenty-ninth of December, in the year one thousand eight hundred and eighty-six, when, through a Decree of the Congregation of Sacred Rites, the Most Holy Pope Leo XIII confirmed the cult of the ancient martyrs of England, who, from the year 1535 to 1583, perished for the Catholic Faith and for the Primacy of the Roman Pontiff, especially those whose martyrdoms were formerly depicted with authority by Pope Gregory XIII in the church of the Most Holy Trinity in the City, in the year 1584, with the privilege of the same Pope, and with the inscription in bronze. Since, however, in the aforementioned Decree, only fifty-four Blesseds were specifically named, the Archbishop of Westminster and other prelates of Britain, expressing their own sentiments and those of the faithful clergy and people, earnestly implored the Most Holy Pope to deign to include, in a new Decree with the same title and honor, those also who, with them, were united in faith and cause in the final struggle, namely, the Venerable Servants of God: Hugh Faringdon, Richard Whiting, and John Beche, Abbots of the Order of Saint Benedict; Roger James, John Thorne, William Eynon, and John Rugg, monks of the same Order; and also the servant of God Thomas Percy, Earl of Northumberland, who, preferring martyrdom to the loss of his honors and worldly possessions, if he should abandon the faith. They asserted that, based on certain and reliable arguments presented, it was clear that all of these were instructed in the

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true Church of Christ: "Render therefore unto Caesar the things that are Caesar's, and unto God the things that are God's," strengthened by divine grace and the apostolic example, giving due obedience to God and not to men, together with the shedding of blood.

[*Latin ed. p. 747*]

According to the Sacred Rites, number 747, these are to be considered, just like the other English Martyrs, and their cult is fostered by the most auspicious decree from the Apostolic See, which has recognized and approved it. The same Sacred Prelates added these humble petitions, also with a special request, that the Venerable Servants of God of the Order of Saint Benedict, and the illustrious Servant of God Thomas Percy, be joined by the Venerable Hadrian Fortescue, Knight of Jerusalem, who, because of his steadfast confession of the Catholic Faith, was beheaded on July 8, 1539, and is especially venerated by the same Sacred Military Order in the ancient and public religion of Malta. Furthermore, the Most Holy Lord entrusted this cause to be examined and discussed, along with the regular process established in England and other authentic documents pertaining to the matter, to a special assembly of certain Cardinals of the Holy Roman Church, as well as the Official Prelates of the Congregation of Sacred Rites, recently confirmed and renewed, with a preliminary explanation prepared by the Reverend Father Augustine Caprara, Promoter of the Holy Faith. In this assembly, held in a special congregation on the 5th of July of the current month and year in the Vatican, His Eminence and Most Reverend Cardinal Angelo Bianchi, Bishop of Palestrina and Relator of the Cause, proposed the following question: Whether, due to the special indulgences of the Roman Pontiffs and of Pope Leo XIII, it is established that the case pertains to the older Martyrs of England, who, from the year 1535 to 1583, died for the Catholic Faith and for the primacy of the Roman Pontiff in the Church, and whether this constitutes an exception from the decrees of Pope Urban VIII in this matter, and, furthermore, after the Eminences and Most Reverend Fathers, together with the Official Prelates, having heard the written and oral opinion of the Reverend Father, the Promoter of the Holy Faith, and after careful discussion and consideration regarding the nine aforementioned Martyrs, they judged that the answer should be "Affirmative, that is, that the case constitutes an exception." Concerning all of this, a faithful report was made to the Most Holy Lord, Pope Leo XIII, by the undersigned Cardinal Prefect of the Congregation of Sacred Rites; and the Most Holy Lord, having deigned to approve the judgment of the Special Congregation, did so on May 13, 1895.

C. CARD. ALOISI-MASELLA, Prefect of S. C. R.

TRIPEPI, Secretary of S. C. R.

L. * S. ALOISIUS

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[*Latin ed. p. 748*]

748 FROM THE SACRED CONGREGATION'S DECREE. PERUSIA. The cult of the Blessed James of Querceto, a priest of the Order of St. Augustine, has been practiced from time immemorial by the servant of God. James of Querceto, born in the town of Perugia, within the archdiocese of Perugia, towards the end of the thirteenth century. A noble and pious young man, scarcely having completed his boyhood, rejecting the pleasures of the world and burning with divine zeal, he withdrew to the Augustinian monastery of St. Philip and St. James in Perugia, and there, around the year 1304, he was received into the Eremite community, sharing in the common joy of the religious. In that place, regular observance, rigorous abstinence, constant prayer, unblemished chastity, and other excellent virtues shone forth in a remarkable manner. He peacefully laid down this life, hidden in God, most holily lived, and advanced in years, in the year 1366. For it is a constant tradition that this happened when, kneeling before the image of the Blessed Virgin Mary, he was praying most devoutly, so that his death appeared to those present as a most sweet passage from this earthly place to the heavenly homeland. It is also recorded that, as a sign of his blessed passage, the church bell, without anyone ringing it, emitted a sound from the tower at that time. The body of this servant of God was buried according to the custom of the brethren and the rites of the Church, and after a few years had passed since his death, it was exhumed and placed in a noble urn, inscribed with the title of Blessed, and with an account of his virtues and miracles, for the piety and veneration of the people. The fame of sanctity, arising from his outstanding virtues and miracles, immediately gave rise to the cult of James of Querceto, and transmitted it to posterity, as proven by reliable witnesses and elders from the year 1604, who testified from their own sight and knowledge, and from the public tradition of their ancestors, with the approval and judgment of the Most Reverend Bishop of Perugia, who decreed that the sacred relics of the servant of God should be transferred from a humble place to a more noble one, and honorably placed beneath the altar. Now, since a new opinion has been added regarding this cult, which was practiced before the time of Urban VIII, by a judge delegated by the Most Reverend and Right Reverend Frederick Foschi, Archbishop of Perugia, therefore, at the urgent request of the Most Reverend Father Sebastian Martinelli, Prior and General Postulator of the Order of St. Augustine, and with the Most Eminent and Reverend Lord Cardinal Vincent Vannutelli, Relator of this Cause, in the meetings of the Ordinary Congregation of Sacred Rites held at the Vatican on the designated day, the following question was proposed for discussion: Whether the opinion of the judge, given by the Most Reverend Archbishop of Perugia...

[*Latin ed. p. 749*]

FROM S. C. RITUUM 749: Regarding the practice, from time immemo-

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rial observed, concerning the cult rendered to the Servant of God, and concerning the case excepted from the Decrees of the Most Holy Pope Urban VIII, is it to be confirmed in this case, and to what effect does this pertain? Furthermore, the Most Reverend Fathers, entrusted with the safeguarding of the Sacred Rites, having carefully considered all matters, and having heard the voice and the written opinion of the Most Reverend Father D. Augustine Caprara, Promoter of the Holy Faith, have decided to respond: "Affirmative, that is, the matter is to be confirmed." On the 4th of June, 1895. Subsequently, these matters were reported by me, the undersigned Cardinal, Prefect of the Congregation of Sacred Rites, to the Most Holy Lord, our Pope Leo XIII, and His Holiness deigned to approve and confirm the response of the Sacred Congregation on the 10th of the same month and year. C. CARD. ALOISIUS - MASELLAS. Prefect of the Sacred Congregation. L. * S. ALOISIUS TRIPEPI, Secretary of the Sacred Congregation.

FROM 3. CONGREGATIONE INDICIS: On Friday, the 14th of June, 1895. The Sacred Congregation of Eminent and Reverend Cardinals of the Holy Roman Church, by the Most Holy Lord, our Pope Leo XIII, and the Holy Apostolic See, entrusted with the Index of books of pernicious doctrine, and with their condemnation, prohibition, expurgation, and permission throughout the Christian Republic, on the 14th of June, 1895, condemned and condemns, prohibits and prohibits, or ordered and orders that the following works be referred to the Index of Prohibited Books: "Documenta quaedam" concerning the Sacred Scriptures, with the doctrine of Saint Hildegard concerning rationality (V. Migne 888, D. and Pitra 249, I I I, 511 A. B. C. D), and concerning ancient times. Compiled with care and study by the Reverend Father Augustine Damoiseau. — Genoa, Typografia Sordomuti, 1894.

[*Latin ed. p. 750*]

750 FROM S. G. INDEX: Concerning the Apocalypse and the Ministry of the Eucharist, with the addition of various spiritual writings. — Genoa, Printing House of the Royal Institute for the Deaf and Mute, 1894. Little Gospel — "God is love" — that is, a collection of various spiritual writings concerning the life of love. — Genoa, Printing House of the Royal Institute for the Deaf and Mute, 1894. Bovio, Giovanni. — St. Paul — With a preface and portrait of the author. 4th edition. — Naples, 1895. Edition of the periodical *Fortunio*, 24, in Pizzofalcone — as condemned in the Index. Lacaze, Félix. — *At Lourdes with Zola*. — Parallel to Zola's novel. Dedicated to His Holiness Pope Leo XIII, and with a double preface: by the author, in memory of Professor Doctor Charcot, for the School of Salpêtrière; by Professor Doctor Bernheim, for the School of Nancy. — Paris, E. Dentu, Publisher, 3 and 5 Place de Valois, Palais-Royal. Odón de Buen, Doctor in Natural Sciences — Professor by examination of Natural History at the University of Barcelona. — *Elementary Treatise

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on Geology*. — Barcelona, Printing and Publishing Establishment "La Academia," 6, Ronda de la Universidad, 1890 — as condemned in the Index. — *Elementary Treatise on Zoology*, Barcelona, Printing and Publishing Establishment La Accademia, 6, Ronda de la Universidad, 1890 — as condemned in the Index. Garda Moreno and P. Berthe, by Gilbert (Ramón Illarramendi). — Maracaibo, Printing House of *Los Ecos de Zulia*, 1894. Angelini, Francis, Author of the work: *History of Italy for use in secondary, higher, and technical classes* — second part. (Modern Age from 1492 to 1883). — Naples, 1884; approved with praise, and the work approved, by Decree of January 25, 1894. Frigeri, Anthony, Author of the work: *The project of Minister Bonacci*. Open letter to the Honorable Senators and Deputies. — Palermo, Giovanni Villa, Publisher; condemned as prohibited by Decree of the Sacred Congregation of the Holy Office, August 16, 1894 — approved with praise, and the work approved. De Castro, Francis; lecturer at the Faculty of Medicine of Rio de Janeiro, Director of the Sanitary Directorate of the Federal Capital. — *The Abel Patent from the point of view of direct criminality, public morality, and clinical medicine*. — Rio de Janeiro, Laemmert et C., Booksellers - Publishers, 66, Rua Ouvidor, 1893. — Decree of the Sacred Congregation of the Holy Office, February 6, 1895.

[*Latin ed. p. 751*]

FROM THE SACRED CONGREGATION'S INDEX, No. 751: The Rule of the Brothers Minor, according to the Decrees of the Roman Pontiffs and the Documents of the Order, explained by the Most Reverend Father Hilary of Paris, of the Order of the Brothers Minor Capuchin, Province of St. Bonaventure, General Custos, Doctor in Theology and Canon Law. – At H. Pelagaud Fils et Roblot, SS. DD., Booksellers of the Papal See and the Archbishopric of Lyons. – Lyons. Via Mercatoria, 48. Paris, Via Turnonensis, 5. – 1870. – Decree of the Sacred Congregation of the Holy Office, First Session, on the 12th of June, 1895 – The author commendably submitted himself, and approved the work. *Exposition de la Règle de S. François d'Assise, avec l'histoire de la Pauvreté* by the Reverend Father Hilary of Paris, of the Order of the Brothers Minor Capuchin, Doctor in Canon Law and Theology, Member of the Academy of the Catholic Religion in Rome, Apostolic Missionary. – Fribourg, Imprimerie de Ph. Haesler et Comp., 13 Rue des Alpes – 1872. – Decree of the Sacred Congregation of the Holy Office, First Session, on the 12th of June, 1895 – The author commendably submitted himself, and approved the work. Therefore, no one, of whatever rank or condition, may dare to publish, or after publication, to read or retain the aforementioned works, in any place or language, but must deliver them to the Ordinaries of the places, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been related to the Most Holy Lord Pope Leo XIII by me, the under-

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signed, His Holiness approved the Decree, and commanded it to be promulgated. In witness whereof, etc. Given in Rome, on the 15th of June, 1895. f SERAPHINUS, BISHOP OF TUSCULUM. CARDINAL VANNUTELLI, PREFECT. Fr. MARCOLINUS CICOGNANI, PROVINCIAL GENERAL OF THE ORDER OF PREACHERS, from the Secret Archives. Place of the Seal. On the 17th of June, 1895. I, the undersigned, Magister Cursorum, testify that the aforementioned Decree was affixed and published in the City. Vincentius Benaglia, Magister Cursorum.

[*Latin ed. p. 752*]

752 Letters from His Holiness Pope Leo XII to Archbishop Emmet Gibbons of Baltimore, in which he commends the plan to increase the number of courses of study at the Catholic University, located in the city of Washington. Beloved Son, greetings and the apostolic blessing. For the sake of demonstrating Our benevolence and concern for this Catholic university, a cause has been presented to Us, which We have gratefully received from you. We are indeed pleased that the institution, which We ourselves established with apostolic authority and have rightfully fostered, has proven itself fruitful for six years, and is now proceeding with full vigor towards even greater achievements. We have expressed Our hopes for such growth not long ago, when We spoke to you and other bishops through a letter. And it has now been demonstrated through your zeal and the piety of others that, next October, new courses of instruction will be dedicated in the same institution; which will provide greater benefits to clerical students and will also be of considerable benefit to lay people in their pursuit of more refined studies. You have rightly planned that these studies be contained within the Faculty of Philosophy; and yet, they will be enriched and adorned with various supporting disciplines, which, when more thoroughly presented and more skillfully taught, will either provide light for the exploration of truth and add luster to that which has been discovered, or will make that truth more useful and more fruitful in the opinion and practice of men. The excellent names of the professors who have been chosen for this task promise a result in keeping with this noble purpose; especially since they are certainly determined to faithfully follow the surest method of philosophizing according to the teachings of Saint Thomas Aquinas, as prescribed by Us. — Given the excellence of these prospects, it could not be otherwise than that these endeavors would receive the approval and blessings of this Apostolic See, which has always been accustomed to praise the most honorable studies and to promote them with all its power. "Therefore, We pray that this great institution may, with this new addition, provide even greater service, and may flourish as a bastion and ornament of both religion and the state. May colleges of Catholic youth strive to send to it students of sharper intellect and with brighter hopes; and may the bonds of holy unity among

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Catholics be strengthened there, through a beneficial example; and may, as from a common source, the power and influence of the same doctrine and action spread widely and have a salutary effect on minds. Meanwhile, to you, Beloved Son, and together with the Archbishops and Bishops, upon whose care the university itself depends, and also to those whose generous beneficence nourishes and increases it, to the professors and students who will begin these new courses, and to all others, We impart Our apostolic blessing most earnestly. Given at Rome, at Saint Peter's, on this 29th day of June, in the eighteenth year of Our pontificate. Leo PP. XIII.

[*Latin ed. p. 753*]

753 SUMMARY OF THE ACTS CONTAINED IN THIS VOLUME XXVII:

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1. Letters and Acts of the Supreme Pontiff. The Most Holy Pope Leo XIII's letter to the Ordinaries of *Brasiliae*, in which useful matters are recommended for the advancement of Christian faith and piety, page 3.

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10. The Encyclical Letter of the Most Holy Pope Leo XIII, by which the "Propaganda Fidei" institute is fostered and commended, 385.

11. The Letter of the Most Holy Pope Leo XIII to the Archbishops and Bishops of the Federate States of *Americae* of the North, 387.

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13. Leo XIII to the Copts concerning the restoration of Christian unity, 705.

14. The Letters of the Most Holy Pope Leo XIII to Emilius Gibbons, Archbishop of *Baltimorensem*, in which the proposal to increase new curricula of studies in the *catholica* University, established in the city of Washington, is commended, 752.

15. From *Firmana*, a petition concerning the resignation of benefices; the unusual practice regarding the publication of resignations of benefices is rejected.

16. Concerning tithes and union; the question is raised between the Chapter and the parish priests concerning tithes to be collected, 14.

[*Latin ed. p. 754*]

754 VARSAVIA, concerning matrimonial dispensations; a dispensation is granted concerning a marriage that has been contracted but not consummated, because the man had previously made a vow of chastity before the marriage.

18 ROMA, concerning the spoliation of property; it is doubted whether absolute possession has been conferred upon the sacred furnishings according to tradition.

129 MELEVILLE, concerning the deprivation of a parish; concerning the administration of baptism; the practice is rejected whereby baptism is administered in the homes of several faithful.

32 The sentence of the episcopal court, by which a parish priest was temporarily suspended from his office, is confirmed.

132 MEIEVILLE, concerning doubts about the reduction of Masses; doubts concerning the reduction of Masses for legates.

VARSAVIA, concerning matrimonial causes; various doubts are raised concerning the instruction of matrimonial processes.

141 SAINT GALL (in Switzerland), concerning marriage; whether this dispensation should be granted.

79 PINNEN, concerning taxes and burdens; it is debated whether the obligation of a contribution, to be made annually by two parish priests, has been fulfilled, considering the changed circumstances.

SAINT JAMES OF CHILE, concerning a matrimonial dispensation; a dispensation is granted concerning a marriage that has been contracted but not consummated.

154 PARENTINA and POLEN, concerning doubts about funerals; the question of letters testimonial to the superiors; it is asked whether the place of the letters of the Bishops is sufficient, and whether the testimonies of the secular Semi-Parishes are valid concerning parochial rights.

105 MEDIOLAN, concerning marriage; a dispensation is requested con-

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cerning a marriage that has been contracted but not consummated.

116 ROMA, concerning the rights of the Prefect; doubts concerning the rights of the chapter; it is doubted whether, in the absence of a Bishop, the Prefect can fulfill the functions which the Bishop performed during his lifetime.

159 PARIS, concerning a matrimonial dispensation; a dispensation is granted concerning a marriage that has been contracted but not consummated.

203 BOLIVAR, concerning taxes for the seminary; the Redemptorist Fathers doubt whether they are obliged to pay the tax.

118 ABULEN, concerning coadjutors for parish priests; the Bishop requests that coadjutors be granted in favor of the seminary.

214 URBEVETANA, concerning funerals; it is debated whether it pertains to the parish priest or to the Cathedral Church to perform the funeral of a woman who, having possessed extraordinary faculties for a time, had resided in Urbevetana for a time and died in the parish in which she exercised a less useful ministry.

122 concerning parish priests who exercise a less useful ministry in a parish.

220 BEIEN, concerning the Bishop.

[*Latin ed. p. 755*]

SUMMARY OF CASES: First, concerning Ordination; there is doubt as to whether young men who succeed to the parish treasurerships can be admitted to the sacred orders. 230 Nelen. Concerning elections; there is doubt about the legitimacy of the election due to certain presumed irregularities. 236 Malacitana, concerning the validity of a dispensation from a matrimonial impediment; there is doubt as to whether the parish priest acted properly in granting a dispensation in articulo mortis from the first degree of affinity in the direct line. 242 Mediolanen, concerning parochial rights; there is a dispute between the coadjutor canons and the Praepositus of St. John the Baptist as to whether the title and right to the parish belong equally to both. 266 Neapolitana, concerning marriage; there is doubt as to the freedom of a woman entering into marriage, but it is answered that there is nothing to indicate the nullity of the marriage. 279 Urgellen, concerning the reduction of Masses; it is asked whether the number of Masses can be reduced, since the revenues have decreased. 329 Parisien, concerning a dispensation from marriage; after a difficult discussion, it is decided that a dispensation should be granted concerning a marriage already celebrated. 331 Interamnen, concerning the deprivation of a parish; the decree of the Ordinary is confirmed, by which it was declared that the parish priest had been removed from the administration, both spiritual and temporal, of the parish. 360 Ceriniolen, concerning dues; it is disputed

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whether the episcopal table or the chapter must pay a tax. 368 Decree concerning clerics and priests of another Diocese. 373 Varsavien, concerning a dispensation from marriage; a dispensation is granted concerning a marriage already celebrated but not consummated. 401 Derthusien, concerning the service of the choir; it is decided that even the Dignities of the Chapter, just like the other canons, are obliged to attend the conventual Masses, and to serve the choir and the altar. 413 Asculana, concerning choral service; the canons request four months of vacation, instead of the three granted by the Tridentine Council, so that they may more easily fulfill the other duties with which they are burdened due to the scarcity of clergy. 427 Panormitana, concerning the nullity of marriage; the sentence of the archiepiscopal court is confirmed, which had maintained the validity of the marriages. 457 Nolana, concerning the annual offering; the question is whether the entire clergy is obliged to offer to their own Bishop on the feast day of St. Mark a certain sign of obedience. 476 St. Galli, concerning a request regarding the acceptance of offerings for Masses; the faculty is granted, for ten years, to accept new legacies. 480 Gallipolitana, concerning jubilees; the grace of a jubilee is granted, although the chapter did not fully agree. 484 Gnesnen, and Posnanien, concerning marriage; it is decided that there is proof of nullity.

[*Latin ed. p. 756*]

756 In the matter of a marriage, where it is alleged that the free consent of the woman was lacking, the case is to be examined.

756 *Compostellana* concerning the administration of offerings; it is decided that nothing should be given to the parish priest for the administration of alms.

756 *Aretina* concerning the right to appoint certain chaplains; the question is whether the election of chaplains belongs to the Bishop or is vested solely in the archpriest, in the absence of other members of the Chapter.

756 *Nanceyen* concerning translations and suspensions; the decision of the Ordinary regarding the translation and suspension of a parish priest is confirmed.

756 *Parisien* concerning a dispensation from marriage; a dispensation is granted from a marriage that is valid but not consummated.

756 *Montisvidei*; the Bishop's request regarding the obligation to require priests to accept the rule of the venerable Institute of Holzhauser.

756 *S. Severini* concerning the granting of a jubilee; the jubilee is denied, in view of existing decrees.

756 *Pinnen* concerning the rights of confraternities; a dispute exists between the parish priest and the Confraternity regarding the right to perform sacred functions.

756 *Monopolitana* concerning prohibitions in processions; it is decided

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that the Third Order of St. Dominic has the right to precede others in processions.

756 *From the Sacred Congregation of Rites*: after a preliminary examination, in favor of the woman, to be determined by the Ordinary.

756 *Suessana* concerning the deprivation of a parish; it is decided that the place is suitable for the removal of a parish priest.

756 *Normae aliaque quoad musicam sacram* (Regulations and other matters concerning sacred music).

756 *Resolutiones S. Rituum Congregationis circa usum linguae slavicae* (Resolutions of the Sacred Congregation of Rites concerning the use of the Slavic language).

756 *Romana* concerning a certain burden attached to a certain canonical prebend of St. Mary in Tianstiberim; whatever was requested is granted.

756 Concerning the blessing to be given after a sacred discourse.

756 *Cusentina* concerning funerals; the question is whether the right to perform funeral rites belongs to the Regular clergy or to the parish priests.

756 *Romana* concerning a reduction of a burden; the requested reduction is denied, due to the proportional decrease in the value of Spanish currency, etc.

756 *Sancti Iacobi de Chile*; a rescript from Paris.

756 *Parisien*, the decree for the beatification of the Servant of God, Ludovica de Manila.

756 *Rhotomagen*, the decree for the beatification of John Baptist de La Salle.

756 Concerning the octave day of the dedication of churches.

756 *Castri Maris* various doubts.

756 *Carthaginen* in India; a rescript.

756 Decree concerning the Servants of God, etc., regarding the use of the mitre in divine worship.

[*Latin ed. p. 757*]

SUMMARY OF DECREES: General Decree concerning the manner of making solemn vows for the purpose of religious service, a practice observed from time immemorial, concerning the Servant of God, Joan of Toulouse, a nun of the ancient observance of the Carmelites, now beatified.

Decree concerning a doubt regarding major and minor feasts.

Decree concerning the feast of the Most Holy Heart of Jesus.

Angelopolitan Decree concerning doubts regarding the ceremonial observance of Bishops.

Concerning the sacred functions of the week.

Of Naples, or of Lycia. Decree of the Order of Saint Benedict concerning

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the Beatification of Bernardine Reali, etc.

Of Gubbio. Decree concerning the beatification of the venerable Servant of God, Clara Isabella Ghezi.

Additions to be made to the feasts of Saint John of God and Saint Camillus de Lellis.

Of France. Doubts concerning the feast of the dedication of a church.

Of Rome, or of Milan. Decree concerning the beatification of the venerable Servant of God, Glycerius Landriani.

Of Bruges. Confirmation of the cult rendered to the Servant of God, Idesbald, of the Cistercian Order.

Of Granada. Doubts concerning the habit of the Master of Ceremonies, and the morning readings.

General Decree concerning commemorations in Vespers.

General Decree concerning Octaves during Lent.

Of Trent. Doubt concerning a consecrated church.

Decree. Doubts concerning public litanies.

Of Aurelian. Concerning the beatification and canonization of the venerable Servant of God, Joan of Arco.

Of Toulouse. Decree concerning the confirmation of the cult in Belluno and Feltre.

Of Naples, or of Lycia. Concerning the beatification of the venerable Servant of God, Bernardine Reali.

Of Naples. Concerning the beatification of the venerable Servant of God, Vincent of Rome.

Of Rome. Doubts concerning various matters.

Of Bruges. Concerning the titular church.

Of Cadurc. Concerning the patron saint of a church.

Of Macone. Doubts concerning various matters concerning the Mass for the Dead, concerning the feast of the Most Holy Heart, and other matters.

Of Urgell. Doubts concerning the Mass for the Dead and the feast of Saint Michael the Archangel, etc.

Of Veliterna. Concerning the practice of not kneeling at the words "and was incarnate" in the Creed.

Of Saint Miniato. Decree concerning the beatification of the venerable Servant of God, Theophilus of Curte.

Of Westmonaster. Confirmation of the cult of many Servants of God in England, for the sake of the martyrs who died for the Faith.

[*Latin ed. p. 758*]

SUMMA ACTORUM 758 Decree concerning the confirmation of the cult, granted to the Servant of God James of Cerqueto, 748 FROM THE HOLY

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[*Latin ed. p. 759*]

SUMMARY OF DECREES, namely, XIV concerning the celebration of marriages among the Mahometans.

318 It is doubted whether a Catholic priest can be present at certain ceremonies.

321 Doubts regarding the rites employed concerning the bier.

325 Doubts regarding certain prostrations towards the deceased.

325 Doubts regarding matters and rites concerning the dead.

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327 It is inquired whether it is permissible for Catholics to acquire properties burdened with taxes, etc.

328 Doubts regarding ancestral tablets kept in the home.

444 Doubts regarding the cleansing of the tombs of parents.

445 Concerning communication with heretics.

447 It is forbidden to hear the Masses of Schismatics.

449 Concerning the celebration of Mass in the temples of heretics.

449 Regarding communication in divine matters with heretics.

449 Doubts regarding communication in divine matters between Catholics, Schismatics, and heretics.

452 Concerning the celebration of Mass by Catholic priests in churches usurped by Schismatics.

454 Whether Greek Schismatics can enter the churches of Catholics.

454 A Catholic regarding the baptism and sermons of Protestants.

455 Concerning the wedding blessing, requested from a non-Catholic minister.

455 Concerning attending the funerals of heretics.

759 Decree concerning the law of fasting and abstinence, to be anticipated or dispensed by Bishops.

512 Decree concerning the Fenians.

574 It is not permissible for heretics to be godparents at the administration of Baptism.

574 Regarding the burial of corpses with heretics, and regarding marriages to be celebrated.

575 Regarding those who have given a name to the Masonic sect, doubts arise.

576 Concerning matters to be observed by the clergy regarding their conduct with Masons.

699 Concerning admitting to the sacraments those who have given a name to secret sects, by tenure, etc.

701 Concerning the translation of the New Testament.

701 From the Holy See, Epistles and Regulations of Rome concerning pensions; the Vatican chapter requests a grace period for the payment of pensions.

126 Encyclical Letters concerning the sacred preaching, addressed to all Bishops of Italy, by order of the Supreme Pontiff Leo XIII.

162 Regarding the submission of accounts; the question is raised whether there is a place for an appeal from the sentence of the Curias of the Bishop of Havana and the Archbishop of Cuba.

307 Regarding jurisdiction; the decision given in another court is con-

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firmed concerning the matter between the Ordinary and the religious Order.

375 Regarding the removal, suspension, and reinstatement of Saint Joseph of Costa Rica.

[*Latin ed. p. 760*]

760 A matter concerning minor orders; the question is between the Ordinary and a priest who claims that the decree of removal and suspension against him is not valid, and who seeks compensation for damages suffered.

430 Letters from the Prefect regarding the use of the Rota, commonly known as the "Velocipede."

437 Augsburg, concerning funeral rights; it is decided that the Hospital of St. John of God is exempt from the jurisdiction of the parish priest.

559 Regarding the nullity of the profession of members of the Order of St. Mary of Mercy; it is declared that there is no proof of the nullity of the profession.

627 Ruremonden. Doubts concerning the vows of the nuns of the Ursuline Order; it is questioned whether the vows taken are simple or solemn.

631 Centumcellarum, concerning precedence; it is asked whether the Minor Observants or the Capuchins should precede in processions and other sacred functions.

675 Spoletan judgment; the judgment of the Court is confirmed, in which a parish priest was condemned to repay money to another priest for services rendered during the parish priest's prolonged absence from the parish.

682 Collen, concerning a canonry; it is decided that a priest who has given money should be considered a titular canon, and that one of the canonries suppressed by civil law should be established for him.

686 Nicien, concerning a canonry; the question is who is entitled to the new canonical presentation, and who has the right to nominate for it.

734 From the Sacred Congregation for the Propagation of the Faith: A doubt concerning the tax to be applied when a dispensation from marriage is granted.

191 Doubts concerning superstitious practices.

319 A doubt concerning the impediment of mixed religion, and concerning the rite by which a child of Catholic parents, but belonging to different rites, should be baptized.

383 For the faithful of any rite, in the absence of a priest or a church of their own rite, it is permissible to receive Holy Communion according to the rites of the church existing in that place.

441 Letters in which it is declared that the pontifical constitutions against

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clandestine sects also apply to the Eastern churches.

572 From the Sacred Congregation of the Index: A decree prohibiting certain books.

255 A decree prohibiting various works.

442 Encyclical letters.

702 Decree concerning the prohibition of certain books.

749 From the Consistory Acts: Concerning the Consistory held on March 18, 1895.

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[*Latin ed. p. 761*]

761 GENERAL INDEX OF CONCLUSIONS NOTED IN MOST OF THE ACTS CONTAINED IN THIS VOLUME, THE SUBJECT MATTER OF WHICH IS AMPLY EXPLAINED OR STATED IN THE INDIVIDUAL ACTS. These conclusions are included under the following terms: Testimonial Letters. Marriage. Holy Orders. Parish Priest. Assistant Priest. Parish Priest. Privilege. Canonicals. Religious Profession. Precedence in Processions. Resignation of Benefices. Prescription. Betrothal. Testimonial Letters. In order that a Bishop may be able to promote his subjects, who reside elsewhere, to the holy orders, testimonial letters from the Ordinary of the place where the subjects are to be ordained must be obtained. page 162. Marriage. Proof of non-consummation can be obtained by the assertion of both spouses, confirmed by oath, and even more so if the testimony of witnesses, also under oath, is added. page 32. The continued cohabitation of spouses for several nights constitutes a strong presumption of consummation, both in law and de jure; which, however, may be rebutted by a confession that is most likely true, especially if the confession is to the detriment of the confessor himself. Ibid. The presumption of consummation is less forceful when the betrothed have remained alone together in the same room for only a few nights, never, however, in the same bed; and if there are true and valid impediments to this marriage, ibid. Since there is a just cause for a dispensation in a valid marriage, the more true and common opinion is that this just cause should not always consider the public good, but that it is sufficient if it considers the private good, and the private utility. No one doubts that force and fear can prevent marriages from being contracted, and can dissolve contracts; but such force and fear must be of a kind that destroys the very consent, or the necessary freedom of consent. page 94. Therefore, not every fear has this effect, but only a grave fear, or one that falls upon a man or woman who is steadfast; namely, when a present or future evil is feared, which cannot be endured at all. Ibid.

[*Latin ed. p. 762*]

762 GENERAL INDEX. Such fear, however, must be legally proven by

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the accuser; for no one is presumed to have contracted marriage in such a way, when it is established that there was external consent, before the Church, page 94. Fear, by which no marriage is presumed to be declared, is not proven by witnesses who do not conclusively state the circumstances of the threats; for witnesses must testify about the fear, concerning which the case is being considered, by alleging threats, beatings, and the like, which are indications of the fear inflicted, ibid. Indeed, if witnesses were to testify about fear without alleging external judgments, the fear they induce should not be believed, because they would be testifying about a purely internal act, known only to God; such as is the fear consisting of mental trepidation, page 95. In the present case, all of these things seem to apply; since nothing was apprehended during the celebration of this marriage that would manifest even a slight fear; and it is surprising that no witness observed the woman approaching the altar being forcibly and gravely compelled, ibid. It must be demonstrated that the aversion of the patient persisted until the very act of marriage; for if there are intervals, a change can be presumed, especially in a woman who is changeable, ibid. The consummation of marriage is presumed to be violent and to hold the place of truth, when a strong man and a woman in the prime of life have cohabited and slept in the same bed, ibid. The presumption of violence in the consummation of marriage is held to be true until, besides the sworn testimony of the conforming spouse, other proofs are brought forward, clearly demonstrating the lack of consummation, such as the examination of the woman's body, ibid. The oath of a woman asserting that the man was unable to have intercourse with her is held in high regard by the sacred canons; especially if the same woman shines forth with unanimous integrity and piety, page 105. In matrimonial cases, relatives and parents are accepted, and often preferred to others, to give testimony, because they are more easily able to know those things that are hidden from outsiders, ibid. The primary sign of physical virginity, according to canonical jurisprudence, is considered to be the integrity of the hymen, along with the absence of any scars or fissures, ibid. In the present case, it has been sufficiently demonstrated by experts in the medical arts that there was no lack of untainted modesty in the woman's body, ibid. The Decree of the Holy Office of June 5, 1889, has the force of a general decree, so that it is permissible for all the Episcopal courts of the Catholic world, in judicial practice, to overlook something from the Constitution "Dei Miseratione," and to close matrimonial cases in one judgment in the cases set forth in the decree, page 153.

[*Latin ed. p. 763*]

INDEX: The testimony of the seventh witness is not required in cases of nullity of marriage for any reason; but such testimony, strictly speaking, must be required to corroborate the confession of the spouses regarding the lack of consummation of the marriage, ibid. The witnesses of the seventh

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witness do not offer testimony of knowledge, but of credibility; for they are asked whether they believe that the spouse, from whom they have been induced, has spoken truthfully, considering his religion and honesty, ibid. Bishops, without the delegation of the Supreme Pontiff, cannot conduct a process in matrimonial cases for the granting of a dispensation from His Holiness: because Bishops lack the authority to judge this matter with a definitive sentence, page 154. This is also derived from the Benedictine Constitution § 14; in which Ordinaries are commanded to present to the Holy Father a petition, in which the details of the facts are accurately written, and the reasons leading to the requested dispensation, without mentioning any judicial proceedings, ibid. Even after the complete investigation of a case based on the title of impotence, and the wife's virginity has been established by physical examination, the process may be further pursued at the wife's request, and the records of the case may be sent to the Sacred Congregation, even if the husband's impotence has not been proven: because the woman may lawfully request a dispensation from the Holy Father from a marriage that is valid but not consummated, ibid. SERIAL 763 It is not necessary to send, along with the records of the case, the opinion of a theologian and canonist, but only the observations of the defender of the bond, by duty, ibid. Even in articulo mortis, Bishops, or those delegated by them, cannot grant a dispensation for entering into marriage, regarding the impediment of Holy Orders of the priesthood, and of affinity in the direct line arising from a lawful union, page 245. The Roman Pontiff, although he might, according to the strictness of the law, grant a dispensation regarding the impediment of affinity in the first degree of the direct line, arising from a lawful union: he has nevertheless never used this authority, for reasons of the greatest propriety, ibid. A healing at the root is usually granted by the Apostolic See when it is established that the marriage, although actually entered into, appeared to have the appearance of a true marriage, ibid. Only an unjust fear, used to extort a marriage, is sufficient to invalidate it, p. 306. Whenever fear is not used to extort a marriage, either by a free cause or by a natural cause, the marriage is not invalidated: and therefore, a marriage contracted by a prisoner in prison would be valid, who would prefer marriage to prison, provided that the prisoner was not the cause of entering into the marriage, ibid. For in this case, the involuntary element that is found in the said marriage, provides an opportunity for him from his own.

[*Latin ed. p. 764*]

764 GENERAL INDEX: Wickedness is not caused by an external factor; because he chooses, of his own accord, imprisonment as a means of escape, by which already conceived fear is removed, ibid. Moral certainty regarding the non-consummation of marriage is sufficient to grant a dispensation, as is demonstrated by the authority of Doctors and the jurispru-

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dence of the Sacred Congregation, page 359. Complete proof of virginity, as stated in Chapter 4 concerning proof, must consist of three elements: namely, the sworn testimony of the parties involved, the examination of the woman, and the testimony of seven witnesses. If a woman is placed under the power of a captor, for the purpose of entering into marriage, page 476. Regarding this matter of abduction, even if consummated, no impediment arises, if it is done to satisfy lust, but certainly not to enter into marriage, ibid. Sworn testimonies of the spouses, consistent and proceeding from persons of worthy faith, supported by the testimony of seven witnesses, are sufficient to induce a moral conviction of the non-consummation of marriage, without the need for a physical examination of virginity, page 670. However, ibid. When a certainty, clearly defined by law, is not present, which is required and sufficient for granting the grace of dispensation, no more certain rule can be prescribed than that it should be one that would assure a prudent man, considering the recurring circumstances, ibid. From Chapter 4 concerning frigidity and malice, it is deduced that a dispensation can be granted even by the confession of only one of the spouses, strengthened by the testimony of seven witnesses, whereby each spouse swears that carnal intercourse has never taken place between them, ibid. Marriage is considered only valid and not consummated, as long as the hymen, which covers the vagina, remains intact; because from the integrity of the hymen, inviolate virginity is deduced, ibid. Abduction is the violent abduction of a woman from a safe place to a place where sacred rites are performed. After the Bull *Speculatores*, by which common law is restricted, Bishops cannot confer sacred orders, unless they have been invested with a proper benefit, page 235. From the responses of the Apostolic See and the opinion of authors, pensions can be increased, which are paid by the civil government to sacred ministers for the ecclesiastical duties they perform, due to the obligation assumed towards the Church, ibid. Assistant Parish Priest. Assistant parish priests act in the name of the principal priest, when they perform acts of parochial jurisdiction in churches that are called auxiliary churches, erected for the greater benefit of the people, and for the support and assistance of the mother church, page 278.

[*Latin ed. p. 765*]

INDEX: A parish lacking its own parochial jurisdiction cannot, under its own name, exercise any parochial rights or privileges, which are granted by sacred canons, or which can be acquired by legitimate prescription, ibid. A parish priest, to be properly so called, must administer the parochial benefice under his own name, with a people entirely distinct from others, ibid. GENERAL: According to chapter 9, session 25, paragraph 765 of the Council of Trent concerning Reforms, one can acquire the right of patronage through a simple endowment of a benefice or the restoration of an endowment. Therefore, the Holy Congregation, not attending to the

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defect of canonical erection by the Bishop of Colle di Val d'Elsa in the case presented, resolved that the priest was a true and canonical titular. ibid. Parish Priest. Precedence in processions. Parish priests living shamefully and scandalously can, after being warned, be coerced and punished by the Ordinary, and can also be deprived of their benefices, as long as they persevere in their wickedness, page 6, section 2, paragraph 1. In controversies concerning precedence between religious mendicants, the possession or quasi-possession of precedence must first be considered; for this is the superior and principal title, to which others are subordinate, page 6, section 8, paragraph 2. However, if this is lacking, and when the title of seniority of the Convent and the title of affiliation or priority of apostolic approval are present simultaneously, as discussed above, it remains controversial as to which of these should prevail, and the Holy Congregation has prudently judged that it should not intervene. ibid. A just and legitimate cause for the removal of a parish priest is shown when he is unable to exercise his parochial duties, and to promote the flock entrusted to him for their salvation, ibid. Canonical Prebends: It is one thing to found a benefice anew, and another to restore the endowment of a benefice already existing: for the former, a formal decree of canonical erection is required, namely that the Bishop or Pope, accepting the endowment, designates and attaches the sacred office; for the latter, it suffices that the simple consent of the Bishop was present, page 6, section 9, paragraph 1. It cannot be correctly inferred from the fact that someone has acquired the right of patronage in a benefice that they have also founded it, because from the particular decision in the case of Centumcellae, nothing can be deduced for the resolution of the general question, since the reason for the decision of the Holy Congregation is not known; and even if it were known, it could not be of any consequence, because the reason for the law does not fall under the law: therefore, page 6, section 8, paragraph 3. As in the past, so also in the future, in resolving questions of precedence between Regular clergy, the Constitutions of the Gregorians must be considered.

[*Latin ed. p. 766*]

766 INDEX GENERALIS Marianae, the decree of Ampurias, and other canons of the Roman Church, ibid. Decisions of Congregations, ibid. Prescription. When it is a matter of taking away a right from one and acquiring it for another, prescription is required, not custom. page 426. For custom proceeds contrary to or beyond the common law; whereas, prescription deals simultaneously with the prejudice of a third party; and in order that a distinction may be made, true prescription must be present, not custom, ibid. It is clear that custom and prescription differ from each other; for the foundation of custom is consent, at least presumed, of the legislator, while prescription is entirely based on possession, or quasi-possession, held in a certain manner and for a certain time, ibid. A pretended immunity of dig-

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nities cannot be legitimately acquired by prescription; since, according to the Doctors, nothing can be prescribed contrary to ecclesiastical discipline, ibid. From the Constitution of Benedict XIV: "Since it is always commanded that all dignities and canons of the same Church, in their respective turns, should recite the sacred conventual prayers." page 427. Absence from the canonical hours cannot be acquired by prescription, and even less so from the conventual Mass, which is the most important part of the divine office, ibid. Therefore, more is taken away from divine worship when the conventual Mass is not celebrated, even if the hours are celebrated. And therefore, no one can claim that a custom, even one of long standing, allows for the non-celebration of the conventual Mass, because it ought rather to be called an abuse and a corruption, than a legitimate custom, ibid. When it is not a matter of avoiding damage, but of obtaining profit, it seems clear that the legislator preferred to deny rather than to allow, so that his constitutions might be violated by the negligence of private individuals. ibid. Oaths regarding the observance of statutes operate, according to the Doctors, so that the contrary observance cannot be alleged against the same statutes; for this promise opposes the initial contrary custom, ibid. Privilege. A privilege, for which possession of more than one hundred years is a guarantee, must be entirely observed: in truth, for more than 200 years, the Congregation of the Daughters of the Sacred Heart had a common superior with the Fathers of the Society of the Mariana Islands, page 382. Privileges are most to be maintained when they produce salutary effects in practice, and are successively strengthened by apostolic approval, as is the case in the present instance. The Holy Congregation, in approving the Constitutions of the Nuns, also recognized the privilege of the common superior. ibid.

[*Latin ed. p. 767*]

INDEX GENERALIS 7Ü7. Profession of religious life. Resignation of benefices. Since everyone is presumed to be of sound mind, he who impugns the validity of a religious profession, as if it were made by one not in control of his mind, must conclusively prove that the one making the profession was truly affected by dementia; it is not sufficient to allege that insanity preceded or followed the profession, but it is necessary to demonstrate that it existed at the time the profession was made. page 630. Better arguments in these cases are derived from medical experts; but they should not be given such weight that other conjectures are completely excluded: and the judge should not be confused by certain actions, which are rather to be attributed to the singularity of character and the fervor of nature, and which are commonly called original, and yet cannot be called insane actions. page 631. Resignations of benefices, which are made in the hands of Ordinaries, must be subject to the manner and form prescribed by Gregory XIII in the Constitution. The

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circumstances preceding and accompanying the profession contribute greatly to determining its value; therefore, if a novice has regularly completed his novitiate, and after completing a three-year period of simple vows, has solemnly professed, and nothing to the contrary has ever arisen, it is presumed that his profession possesses all the conditions required by law. page 13. It is difficult for human judgment to eliminate frauds, simoniacal agreements, and many inconveniences. The manner and form transmitted by the Pope must be observed everywhere and always, excluding any publication whatsoever in such resignations, under penalty of nullity. page 13. Marriage. According to the opinion of the Doctors, the validity of marriage is more likely to be proven by the mutual expression of will made by the parties, than by the formulas of words. page 612. Therefore, it is sufficient to prove private marriage by the proof of mutual consent, whether collected from words, or from added facts, or even from conjectures, which must be considered in such cases. page 612. The existence of marriage follows the obligation to provide for the support of the spouse, by means designated by the sacred canons; but since forced marriages often have bad consequences, therefore, a benign interpretation of the law has granted the spouse the option of either marrying or making a financial provision. page 13.

[*Latin ed. p. 768*]

IMPRIMATUR Pater Raphael Pierotti, Ordinis Praedicatorum, Sacrae Theologiae Magister.

IMPRIMATUR Iulius Lenti, Patriarcha Constantinopolitanus, Vicarius Generalis.

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